(30,018)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 708

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, ET AL., PETITIONERS,

vs.

THE UNITED STATES EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1] PLACITA—Omitted

[fol. 2] IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BILL OF COMPLAINT—Filed Jul. 20, 1922

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, Plaintiff,

vs.

R. A. HENNING, as President of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 75, located at St. Paul, Minnesota, individually and as representative of the members of said Association; W. A. Parranto, as Vice President of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 72, located at St. Paul, Minnesota, individually and as representative of the members of said Association; John Williams, as Secretary and Treasurer of the Joint Federation of Shop Craft Employes of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, System Federation Number 75, located at St. Paul, Minnesota, individually and as representative of the members of said Association; R. A. Henning, as General Chairman, District Number 32, International Association of Machinists, located at St. Paul, Minnesota, individually and as representative of the members of said Association; M. Adams, as General Chairman, District Number 32, International Association of Machinists, located at St. Paul, Minnesota, individually and as representative of the members of said Association; W. A. Parranto, as General Chairman, District Number 25, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, located at St. Paul, Minnesota, individually and as representative of the members of said Association; Elmer Olson, as Chairman of the Local Federated Shop Committee, located at Altoona, Wisconsin, individually and as representative of the members of said Association; H. J. Burns, W. Edgell and E. Olson, as the Local Strike Committee of the International Association of Machinists, located [fol. 3] at Altoona, Wisconsin, individually and as representatives of the members of said Association; Ed. Peterson, Ed. Babington and Mike Wilman, as Strike Committee for the International Brotherhood of Boilermakers, located at Altoona, Wisconsin, individually and as representatives of the members of said Association; H. E. Bonell, as a member of the Strike Committee for the International Brotherhood of Electric Workers, located at Altoona, Wisconsin, individually and as representative of the members of said Association; H. Foss and M. Board, as members of the Strike

Committee for the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, located at Altoona, Wisconsin, individually and as representatives of the members of said Association; Charles Turner, as a member of the Strike Committee of Railway Carmen of America, located at Altoona, Wisconsin, individually and as representative of the members of said Association; Lee R. Corrigan, as Chairman of the Local Federated Shop Committee, located at Elroy, Wisconsin, individually and as representative of the members of said Association; A. A. Marceau, as Chairman of the Local Federated Shop Committee, located at Itasca, Wisconsin, individually and as representative of the members of said Association; William Campaigne, as Chairman of the Local Federated Shop Committee, located at Spooner, Wisconsin, individually and as representative of the members of said Association; Joe Cuskey and Charles Kingston, as members of the Strike Committee of the Federation of Shop Craft Employes, located at Spooner, Wisconsin, individually and as representatives of the members of said Association; Ole Hammer, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Ashland, Wisconsin, individually and as representative of the members of said Association; Morris Chaffee, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Spooner, Wisconsin, individually and as representative of the members of said Association; Anton Flaten, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Superior, Wisconsin, individually and as representative of the members of said Association; Charles Meyers, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Elroy, Wisconsin, individually and as representative of the members of said Association; [fol. 4] R. J. Birkmose, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; A. G. Svarstad, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; H. R. Lee, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; C. M. Jennings, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; George Starr, as Local Chairman of the Brotherhood of Railway Carmen of America, located at Hudson, Wisconsin, individually and as representative of the members of said Association; Marcus Kemp, as Chairman, and John W. Clark, as Secretary, respectively, of Lodge No. 343 of the International Association of Machinists, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Charles Weber, as Chairman, and Theodore Graffer, as Secretary, respectively, of Lodge No. 483 of Amalgamated Sheet Metal Workers' International Alliance, located at Superior, Wisconsin, individually and as representatives

of the members of said Association; Frank Berger as Chairman, and Frank Burke, as Secretary, respectively, of Lodge No. 319 of International Brotherhood of Boilermakers, located at Superior, Wisconsin, individually and as representatives of the members of said Association; J. F. Peterson, as Chairman, and E. T. Calvert, as Secretary, respectively, of Lodge No. 81 of International Brotherhood of Blacksmiths, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Ed. Lafferty, as Chairman, and Frank Kumhera, as Secretary, of Lodge No. 1016 International Brotherhood of Electrical Workers, located at Superior, Wisconsin, individually and as representatives of the members of said Association; Carl Milde, as Chairman, and Ed. Anderson, as Secretary, respectively, of Lodge No. 662 of the Brotherhood of Railway Carmen of America, located at Superior, Wisconsin, individually and as representatives of the members of said Association; and all persons combining and conspiring with [fol. 5] them, of whom those named are representatives, Defendants.

Petition in Equity

1. The plaintiff, Chicago, St. Paul, Minneapolis and Omaha Railway Company, alleges that it is a railway corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen and resident of said state.

2. That certain of the defendants, as hereinafter more specifically set out, are citizens and residents of the State of Minnesota and that the other defendants named in the caption of this petition are located within the Western District of Wisconsin.

3. Plaintiff further alleges that the controversy involved herein is of a civil nature and is a controversy between the plaintiff, a citizen and resident of the State of Wisconsin, and the defendants, and their associates, a part of whom, as hereinafter set forth, are citizens and residents of the State of Minnesota, and is a controversy between citizens of different states, and that the amount in controversy, exclusive of interests and costs, exceeds the sum or value of three thousand dollars ($3,000.00), and in fact exceeds the sum of fifty thousand dollars ($50,000.00); that the controversy also arises under the Constitution and Laws of the United States, and particularly those regulating interstate commerce and prohibiting interference therewith; also the Sherman Anti-Trust Act, so-called, [fol. 6] approved July 2, 1890; the Clayton Act, so-called, approved October 5, 1914; the various Acts pertaining to the transportation of mails, and particularly the Appropriation Act of July 28, 1916; the Act to Regulate Commerce, of 1887, as amended; the Transportation Act, 1920, approved February 28, 1920; the Safety Appliance Acts, so-called, as amended; that the damages resulting to plaintiff from the acts and conspiracies and combinations of the defendants, as will be hereinafter more fully alleged, and the loss and damage to the plaintiff from the continuance of the unlawful

conspiracies and wrongful and illegal acts of the defendants exceeds said sum of fifty thousand dollars ($50,000.00).

4. Plaintiff further alleges that the Joint Federation of Shop Craft Employes is a labor union organization whose members are composed of machinists, boilermakers, iron ship builders, blacksmiths, drop forgers, sheet metal workers, electrical workers, carmen, their apprentices and helpers, some of whom were formerly employed by plaintiff and other railroads in the United States, and the members of said organization act in concert under the direction of the officers of said Associaion, and the defendants, R. A. Henning, of St. Paul, Minnesota, W. A. Parranto, of St. Paul, Minnesota, John Williams, of St. Paul, Minnesota, are, respectively, President, Vice President and Secretary & Treasurer of their organization at said respective place along the line of railroad of the plaintiff and, as such President, Vice President and Secretary & Treasurer, have charge and control of the membership of said organization, including the membership of said organization located at Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland, in the State of Wisconsin, as the complainant is informed and believes, and direct their conduct and movement as strikers, as hereinafter described; that System Federation of Shop Craft Employes is a labor union organization whose members are composed of machinists, boilermakers, iron ship builders, blacksmiths, drop forgers, sheet metal workers, electrical workers, carmen, their apprentices and helpers, some of whom were formerly employed by the plaintiff and other railroads in the United States, and the members of said organization act in concert under the direction of the officers of said As- [fol. 7] sociation, and the defendants Elmer Olson, H. J. Burns, W. Edgell, E. Olson, Ed. Peterson, Ed. Babington, Mike Wilman, H. E. Bonell, H. Foss, M. Board and Charles Turner, of Altoona, Wisconsin, Lee R. Corrigan and Charles Meyers, of Elroy, Wisconsin, A. A. Marceau, of Itasca, Wisconsin, William Campaigne, Joe Cuskey, Charles Kingston and Morris Chaffee, of Spooner, Wisconsin, Ole Hammer, of Ashland, Wisconsin, Anton Flaten, Marcus Kemp, John W. Clark, Charles Weber, Theodore Graffer, Frank Berger, Frank Burke, J. F. Peterson, E. T. Calvert, Ed. Lafferty, Frank Kumhera, Carl Milde and Ed. Anderson, of Superior, Wisconsin, R. J. Birkmose, A. G. Svarstad, H. R. Lee, C. M. Jennings and George Starr, of Hudson, Wisconsin, are officers and members of the strike committee, general or local chairmen or local secretaries of their organization at said respective places along the line of the railroad of the plaintiff and, as such officers, general or local chairmen or local secretaries, have charge and control of the membership of said organization and direct their conduct and movement as strikers, as hereinafter described; that International Association of Machinists is a labor organization whose members are composed of machinists, machinists' apprentices and machinists' helpers, some of whom were formerly employed by the plaintiff and other railroads in the United States, and the members of said organization act in concert under direction of the officers of said Association, and

the defendants Marcus Kemp and John W. Clark, of Superior, Wisconsin, are Local Chairman and Local Secretary of their organization at said place along the line of railroad of the plaintiff and, as such local chairman and local secretary, have charge and control of the membership of said organization and direct their conduct and movement as strikers, as hereinafter described; that International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America is a labor organization some of whose members were formerly employed by this plaintiff and other railroads in the United States; that the membership of said organization is under the control of the officers of said organization and the defendants Frank Berger and Frank Burke, of Superior, Wisconsin, are Local Chairman and Local Secretary of their organization at said named place and, as such, have charge and direction and control of the members of said organization at said place, which is situated along the line of railroad of plaintiff; that International Brotherhood of Blacksmiths, Drop [fol. 8] Forgers and Helpers is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States, and which membership is under the direction and control of the officers of said organization, and that the defendants J. F. Peterson and E. T. Calvert are the Local Chairman and Local Secretary, respectively, of the local lodge at said place and, as such, have charge of the members of said association at said place and direct the activities and the movements of said membership as strikers, as hereinafter referred to; that the Brotherhood of Railway Carmen of America is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Carl Milde and Ed. Anderson, of Superior, Wisconsin, are the Local Chairman and Local Secretary, respectively, of the local lodge of said organization at said named place and, as such, have direction and charge of the conduct and action of the members of said organization at said place as strikers, as hereinafter described; that the Amalgamated Sheet Metal Workers' International Alliance is a labor organization whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Charles Weber and Theodore Graffer, of Superior, Wisconsin, are the Local Chairman and Local Secretary, respectively, of said organization at said named place and, as such, have direction and charge of the conduct and action of the members of said organization at said place as strikers, as hereinafter described; that the International Brotherhood of Electrical Workers is a labor organization some of whose members were formerly employed by the plaintiff and other railroads in the United States and are under the direction and control of the officers of said organization, and that the defendants Ed. Lafferty and Frank Kumbera are the Local Chairman and Local Secretary, respectively, of said organization at said named place and, as such, have direction and charge of the conduct

and action of the members of said organization at said place as strikers, as hereinafter described.

That each and all of the individual defendants named herein represent a class of numerous and divers persons, members of said labor organizations, and being of a class so numerous as to make it impossible to bring them all before the Court, and, therefore, each and [fol. 9] all of said individual defendants are made parties hereto, in their individual capacity and as representatives of the said class of ex-employes engaged in the strike hereinafter referred to.

Complainant is unable to name each and several the members of said associations, the names of such individual members being unknown to the complainant, and the number thereof aggregating many hundreds, and the number thereof, as the complainant believes, aggregating more than one thousand.

Complainant is also unable to name all of the persons combining and conspiring and sympathizing with the named defendants herein, but the complainant does allege that a very great number of persons, aggregating several thousands, have been and are in fact combining and conspiring with the named defendants in the doing of all the unlawful acts herein described, and in threatening and continuing to conspire and do all of the unlawful acts herein described, and a large majority of the persons so combining, and so doing the unlawful acts herein described, and whose names are unknown to complainant, are members of the said voluntary associations, but all of the persons combining and conspiring with the named defendants act in concert in the carrying out of the objects and purposes of the said association, and of the individuals specifically names as defendants.

All the facts and conditions herein set forth and described are of common and general interest to all of the named defendants, and to all of the un-named persons combining and conspiring with the named defendants, and the named defendants represent and act for and on behalf of the un-named defendants in the accomplishment of the unlawful acts hereinafter more particularly described.

5. Plaintiff further alleges that it is a corporation engaged in the business of a common carrier for hire. That as such it owns and operates a railway system extending into and through the States of Iowa, Wisconsin, Minnesota, Nebraska, South Dakota. That in prosecuting its business as a common carrier it transports freight, passengers and United States mail in the usual and ordinary method incident to that of a railway transportation system, and it serves the public in the usual and ordinary way pursuant to the laws and regulations of the Federal Government and the various States in and [fol. 10] through which it operates; and that in excess of eighty per cent (80%) of all its business, both freight and passenger is interstate commerce.

6. Plaintiff further alleges that pursuant to lawful contract entered into with the United States Government, and pursuant to obligations imposed upon it by the Statutes of the United States Government, it is obliged to transport and carry the mails and parcels-

post of the United States of America, both interstate and intrastate, without hindrance or interruption, and that the patrons of plaintiff along its lines of railway and the communities and industries it serves are dependent upon the Plaintiff for the regular and prompt transportation of the said United States mails and parcels post, and in addition thereto said patrons, communities, people and industries served by Plaintiff are dependent upon it for their comforts and the necessities of life and the continuance of their several lines of work and business, and that any interruption of the traffic of plaintiff, either in the handling of its freight or passengers or in the transportation of the United States mails and parcels post, will result in immediate and irreparable injury to the Plaintiff and to the people, industries and communities served by the Plaintiff in a large measure dependent upon the Plaintiff for the transportation of property, persons and the United States mail.

7. Plaintiff further alleges that it not only transports property, persons and the United States mail in the States hereinbefore mentioned, but that it exchanges such traffic with connecting lines of railway to the extent that all parts and sections of the United States are in some measure dependent upon the continuous and uninterrupted transportation service rendered and to be rendered by Plaintiff, in the proper, efficient and lawful prosecution of its business as a common carrier. And in this connection Plaintiff further alleges that its lines of railway serve some of the large cities of the country, such as Omaha, St. Paul, Minneapolis, Duluth, Sioux City, Sioux Falls and other important centers of population, and that said cities and the people thereof have so developed that they chiefly depend upon the railroads, including Plaintiff, for the continuance of their busi- [fol. 11] ness activities as well as the comfort and welfare of their citizens, and that any cessation of a substantial part of the transportation service of the said Plaintiff in and about the said cities along the lines of railway will not only interfere with and in a large measure interrupt and stop the industry and business of said cities and the inhabitants thereof, but also will, to a substantial and serious extent prevent the transportation to said cities of the supplies necessary to the life and comfort of the citizens and inhabitants thereof.

8. Plaintiff further alleges that in the conduct of its business as a common carrier of both interstate and intrastate commerce, it employs and it is necessary to employ large numbers of persons, not only to operate its trains but also to repair its locomotives, cars equipment and rolling stock, of all classes and description. That for this purpose it employs thousands of men in the construction, repair and maintenance of its said equipment including cars and locomotives; and Plaintiff shows that it is necessary in the conduct of its business as a common carrier and to comply with the provisions of the Federal Safety Appliance Acts that its equipment should be kept in good and proper repair so that the traffic hereinbefore described may be carried on without interruption and with regularity and continuity of service.

9. Plaintiff further alleges that its duty and its right to engage in and carry on the business of both interstate and intrastate commerce constitutes and is in and of itself a property right, and that said right is now being seriously interfered with to the extent that unless the relief hereinafter prayed for is granted Plaintiff, the Plaintiff and the people and communities dependent upon Plaintiff for transportation service will all suffer irreparable injury for which there is and can be no adequate remedy at law. Plaintiff avers that it has a lawful right to carry on its business in an orderly manner without interference or molestation from any of the Defendants, either acting singly or jointly, and that damage to the Plaintiff, which it is bound to and will suffer unless the Defendants are restrained as hereinafter prayed, will result from the destruction, in-[fol. 12] terference and interruption of Plaintiff's business as a common carrier of both interstate and intrastate commerce, and the amount of such damage will far exceed the sum of Fifty Thousand and no/100 Dollars ($50,000.00), for all of which there is no adequate remedy at law, and such remedy as may exist would result in and require numerous and divers actions with no hope of securing ultimate adequate compensation for the injuries which Plaintiff will sustain.

10. Plaintiff further alleges that by the provisions of an Act of Congress commonly referred to as the Sherman Law, it is made unlawful for any person to conspire or enter into a conspiracy the object of which is to restrain or interfere with trade or commerce among the several states. That by virtue of Section 16 of the Act commonly known as the "Clayton Act," Plaintiff is given the right to maintain an action for injunction against every person entering into, forming or promulgating or participating in any conspiracy looking to the interruption or restraint of commerce between the several states. That the Defendants and each and all of them have entered into a conspiracy for the purpose of restraining and interfering with commerce between the several States, carried on and to be carried on by the Plaintiff, pursuant to the prosecution of its business and its duty as a common carrier of persons and property, both interstate and intrastate, and that as a part of said conspiracy the said Defendants have entered upon a campaign and course of procedure aimed at the prevention of the repair of Plaintiff's locomotives, cars and equipment used in the prosecution of its business, and to this end said Defendants and each and all of them are adopting means unlawful in their character to prevent the Plaintiff from employing men to work in its shops at the Cities of Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland in said District and elsewhere therein, where it carries on the general repair of its locomotives, cars and equipment; and in furtherance of such conspiracy the said Defendants, and each of them are adopting unlawful means to coerce, prevent and interfere with the lawful employment of employes,—all of which will be more particularly hereinafter alleged.

[fol. 13] 11. Plaintiff further alleges that under the Act of Congress commonly known as the "Transportation Act," the Federal

Government has created the United States Railroad Labor Board, for the purpose of settling all disputes and controversies between common carriers and their employes. That a dispute arose between Plaintiff and the members of each of the above named labor organizations, including Defendants, regarding the scale of wages to be paid to employes of the classes to which Defendants belong. For the purpose of adjusting said dispute pursuant to the Transportation Act, Plaintiff and said employes, including defendants, submitted the questions in dispute to the United States Railroad Labor Board, and said Labor Board after due hearings at which both said employes and Plaintiff introduced evidence, did on the 25th day of May, 1922 render its decision and prescribe, effective July 1, 1922, a scale of wages for the classes of employes to which Defendants belong. That under the provisions of said "Transportation Act" it becomes and is the duty of Plaintiff to apply and to pay the scale of compensation thus prescribed by the United States Labor Board and Plaintiff has the legal right, duty and obligation arising out of and under the provisions of said Transportation Act of paying as compensation for services rendered by its employe the scale of wages thus promulgated and made effective by the decisions of said Labor Board. That the Defendants, and each and all of them, have entered into and are now promulgating, carrying on and prosecuting a conspiracy in the manner hereinbefre and as will be hereinafter more specifically described, not only to interrupt and interfere with the business of Plaintiff in the manner as hereinbefore set forth, but to prevent and interfere with Plaintiff in obeying, observing and complying with the decision of the United States Labor Board, effective July 1, 1922, fixing the scale of compensation to be paid by Plaintiff as a common carrier, under the terms of the said Transportation Act. That by virtue of the provisions of the Interstate Commerce Act Plaintiff is required to conduct its business as a common carrier in an honest, efficient and economical manner; and that it becomes and is the duty of said Plaintiff, pursuant to said obligation thus imposed by the Interstate Commerce Act, to apply the scale of wages and compensation fixed by the Federal Government through the instrumentality of the United States Railroad Labor Board. That the Defendants, and each [fol. 14] and all of them, have conspired and are now conspiring, and in furtherance of said conspiracy are adopting and propose in the future to adopt unlawful and illegal means to prevent Plaintiff from carrying on its business as an interstate carrier, and are attempting, through said unlawful conspiracy executed by unlawful acts and conduct upon the part of the Defendants, and each of them to prevent Plaintiff from applying the scale of compensation prescribed by the United States Railroad Labor Board, and through said means are attempting to coerce Plaintiff into a scale of compensation other and different from that prescribed by the said United States Labor Board, pursuant to its lawful authority, which scale of wages was effective as of July 1, 1922.

12. Plaintiff further shows that it has at all times complied with all the decisions of the United States Railroad Labor Board and with

all the provisions and stipulations of its agreements and contracts with itf employes, including those of the class to which the Defendants in this action belong, and is now ready and willing to and will comply with all orders of said Railroad Labor Board and all the provisions of law relating thereto.

13. Plaintiff further alleges that the Defendants and the labor organizations named in this Petition, federated and conspired together on and prior to the 29th day of June, 1922, and pursuant to said conspiracy have since said time used the means hereinafter alleged, among others, pursuant to said conspiracy, looking to the interference with and obstruction of the Plaintiff's business as a common carrier and the coercion of Plaintiff into a scale of compensation other and difference from that fixed by the United States Labor Board. That on the 29th day of June, 1922, pursuant to said conspiracy, instructions were issued by the general officers of the said labor organizations directed to all subordinate officers of their respective labor unions, directing that on the first day of July, 1922, at ten A. M. all employes of Plaintiff, members of the organizations hereinabove mentioned, should cease their employment and should leave the service of Plaintiff in a body, such action being commonly known as a "strike." That said orders is-ued by said [fol. 15] Labor organizations calling a strike were a part of an unlawful conspiracy in which each and all of the Defendants herein have participated and are now participating to prevent the movement of traffic on the line of Plaintiff, and to deprive the Plaintiff of the service of its employes, and to make it impossible for Plaintiff to secure other employes and to thus demoralize, interrupt, and if possible, destroy Plaintiff's business as a common carrier of persons and property.

14. That as a result of said strike order on the 29th day of June, 1922, a large number of employes of Plaintiff, members of the Labor organizations aforesaid and others, left their said employment at one and the same time and in concert, in defiance of the orders of the United States Railroad Labor Board, in violation of the Statutes of the United States prohibiting conspiracies in restraint of interstate commerce, and for the purpose and intent of deliberately interrupting, interfering with, and obstructing traffic upon the lines of Plaintiff carrier, all to the great and irreparable damage and injury of Plaintiff, and for all of which Plaintiff has no remedy at law.

15. Plaintiff further shows that the conspiracy hereinbefore referred to and described was and is a conspiracy entered into not only for the purpose of interrupting and destroying commerce, upon the railway lines of Plaintiff but that such conspiracy was entered into and is now being carried out not only for the purpose of preventing Plaintiff from operating its Railroad but for the purpose of forcing all the railroads of the United States to disobey the order and decision of the United States Railroad Labor Board, and to pay a scale of compensation in excess of the wages fixed by the said Labor Board, and to this end said Defendants, operating pursuant to said conspiracy,

are now engaged in unlawful conduct, as will be hereinafter described, looking to the cessation of transportation upon the lines of Plaintiff and all other railroads in the United States, which, if accomplished, will destroy the business of Plaintiff as a common carrier and will paralyze and destroy the business of all industries in the United States, thereby depriving the inhabitants of the United States of the use of its railroads as a transportation system and entailing [fol. 16] untold suffering upon the people of the United States—all to the end and for the purpose of compelling Plaintiff, in common with all other railroads of the United States, to disobey the orders and decisions of the United States Railroad Labor Board, and to pay a scale of compensation to the Defendants and the other members of the unions and labor organizations to which Defendants belong in excess of the lawful scale of such wages and compensation as prescribed by the decision of the United States Railroad Labor Board, effective July 1st, 1922.

16. Plaintiff further alleges that pursuant to the said combination and conspiracy as hereinbefore set out, and in compliance with said strike order, large numbers of Plaintiff's employes, members of the organizations commonly known as the "Federated Shop Crafts," being the organizations named and described herein, refused and ceased to perform their several duties on the first day of July, 1922, and since that time large numbers of said employes, members of said unions, whose labor is essential to the proper operation of Plaintiff's railroad, have gone upon a strike as aforesaid, well knowing that by so doing they would cripple, interfere with and to a large degree prevent the Plaintiff, as well as other railroads in the United States, from the performance of its and their duties and obligations under the laws of the several states and the Federal Government in the prosecution of their business as common carriers. That the said unlawful conspiracy thus promulgated and now being prosecuted by each and all of the Defendants, has not been and is not now for the purpose of terminating the relating of employer and employe as between Plaintiff and said Defendants, but has been and is for the purpose of coercing and compelling the Plaintiff, as well as all other railroads in the United States, to continue the said Defendants as employes upon terms and conditions satisfactory to said Defendants, regardless of the ability of the Plaintiff to pay or meet their terms and conditions, and in violation of a decision duly and lawfully made and entered by the United States Railroad Labor Board.

17. Plaintiff further alleges that as a common carrier engaged in the transportation of passengers and property wholly by railroad [fol. 17] from one state of the United States to other States, it is subject to the provisions and requirements of the Act of Congress approved February 4, 1887, known as the "Interstate Commerce Act" and the several amendments and additions thereto, and was, is and at all times hereinafter mentioned has been subject to each and all of the laws of the United States relating to interstate transportation of passengers and freight, or relating in anyway to the conduct of

interstate commerce and business and to the transportation of the mails of the United States; that by said Interstate Commerce Act it is, among other things required, to provide and furnish cars and other vehicles and instrumentalities and facilities of shipment for carriage and all services in connection with the receipt, delivery, carriage and handling of property to be transported upon reasonable requests therefor, and to establish through routes and to provide reasonable facilities for operating them; that in the discharge of said duties, Plaintiff is obliged to employ continuously in its train service a large number of engineers, conductors, trainmen, switchmen, and the like, as hereinbefore averred; that it is a part of the said combination and conspiracy to prevent Plaintiff from the performance of its said duties, and by the acts and doings of the Defendants and said other striking employes hereinafter more fully described, the said Defendants are by force and intimidation seeking to prevent Plaintiff from the performance of such duties.

That in and by Section 10 of the said Interstate Commerce Act it is in substance provided that any common carrier or any agent or person acting for or employed by such carrier who alone or with any other corporation, company, person or party shall willingly do or cause to be done or shall willfully omit or fail to do any act, matter or thing in that respect required to be done, or shall aid or abet such permission or failure, shall be guilty of a misdemeanor and plaintiff avers that under such requirement it and its said officers and agents are bound to the performance of the duties prescribed by the said Act, or be subject to the penalties thereby imposed, and that one of the purposes of the said unlawful acts and doings of the defendants is to force upon the plaintiff an acceptance of their unlawful demands by preventing it from the performance of its duties by the said Act under the penalties imposed.

[fol. 18] 18. Plaintiff further avers that said defendants, in pursuance of the said combination and conspiracy, all as hereinbefore described, are themselves, and through their agents and representatives, endeavoring by threats, display of numbers, jeers and undue persuasion, to entice and force other employees of plaintiff, and of said other railroads, who desire to continue in the performance of their duties and to carry out their contracts of employment with plaintiff, and said other railroads, to abandon their several duties; that among other means practiced to carry out said combination and conspiracy, the defendants, their agents and associates in said combination and conspiracy, by means of letters addressed to employes remaining at work, and by other divers means, represent that it is the wish of the said labor organizations that said employes shall join in the strike now in progress and threaten bodily and other harm to them and their families in case they remain at work; that employes desiring to perform their contracts with plaintiff and to comply with the decisions of the United States Railroad Labor Board, are met upon the streets and in the vicinity of the shops, yards, tracks, stations and property of the plaintiff by the defendants, their agents and employes and by sympathizers with said de-

fendants, who by threats and other unlawful acts attempt to coerce said employes desiring to remain in the service, whereby and through such acts those employes formerly remaining at work are now leaving the service of plaintiff, and said other railroad companies, on account of fear of bodily injury and difficulty and danger to them of continuing in such service; that the defendants, either in person or through others acting with their knowledge and collusion or acquiescence, together with sundry other persons who are their associates and confederates, have constantly, in large numbers, hung about the shops, yards, tracks, stations and property of the plaintiff and upon the streets and in close proximity thereto, for the purpose of putting the plaintiff's employes in fear of bodily injury and to prevent other persons from entering its employ, and for the purpose of enticing and inducing the employes of the plaintiff to abandon the performance of their respective duties under their contract of employment with plaintiff, and the defendants, their agents and employes, have committed assaults upon employes of the plaintiff who were on their way to work in the shops, yards and tracks of the plaintiff and have inflicted such bodily injury [fol. 19] upon them as to prevent them from returning to work; that the defendants, their agents and employes, have by intimidation and threats, prevented persons about to go upon the premises of the plaintiff for the purpose of going to work, from going to the shops and yards of the plaintiff and have by said means prevented them from entering the employ of the plaintiff company and have thereby prevented the plaintiff from securing the necessary labor to perform the work which it is customarily carrying on at said places.

That as a result of the said unlawful acts of the defendants and their associates and sympathizers, the operation of the railway system of plaintiff is being adversely affected and the movement of freight and passenger traffic and the United States mail throughout their system is being interfered with and interrupted, and employes whose services have been engaged by the plaintiff to take the place of such striking former employes have been interfered with and prevented from performing their work pursuant to the contract of employment with the plaintiff, as hereinbefore set out, and that the said work is essential and necessary for the continued and uninterrupted operation of plaintiff's property as a transportation system engaged in both interstate and intrastate commerce.

19. Plaintiff further alleges that unless the defendants, their agents, associates and sympathizers, are restrained from interfering with employes of plaintiff desiring to work in its shops, the business of plaintiff, as hereinbefore alleged, will be seriously interrupted and its interstate traffic and carriage of United States mails interfered with for the reason that plaintiff cannot successfully prosecute its business without the operation of its mechanical department and a reasonable number of employes necessary therein. That employes cannot be secured and will not remain in the service of plaintiff in

its shops as mechanical employes when repeatedly and continuously met by the aforesaid threats and acts of violence and intimidation.

Plaintiff alleges that it is part of the unlawful combination and conspiracy herein to take advantage of such well known conditions and by calling and proclaiming a strike of all mechanics upon the system of plaintiff and all other railroads in the United States and by frightening away workmen willing to engage in the service of [fol. 20] the plaintiff, thereby to force upon plaintiff and said other railroad companies not a severance of the relations of employer and employe now existing between plaintiff and its said employes, and other railroad companies and their respective employes, but to force upon plaintiff a continuance of such relations under scales of compensation in violation of those prescribed by the United States Labor Board as hereinbefore referred to. That defendants, their agents, associates and sympathizers, all understanding the effect of the existence of a strike accompanied by violence, threats and intimidation, are using every means at their disposal to interfere with and interrupt the lawful and orderly prosecution of plaintiff's business as a common carrier, such means being those hereinbefore described; to-wit: that of picketing, patrolling, intimidation, threats of violence, both in personal conversation, meetings and by letter and by threatening to endanger the person, lives and property of the employes of plaintiff and those about to enter plaintiff's service. That at certain places along plaintiff's line of railroad in Wisconsin, groups of strikers, consisting of squads of men, have from time to time paraded before the entrances to plaintiff's shops and roundhouses.

That the defendants, their agents and sympathizers, have established and are maintaining a system of espionage against all acts of the plaintiff and its officers in attempting to employ and transport men to its shops and roundhouses to enter its service and upon discovering that plaintiff is attempting to place men in its roundhouses and shops who desire to enter into its employment and perform the necessary work which plaintiff has in its car and mechanical department; that thereupon the defendants and their sympathizers, agents and associates, for the purpose of carrying out their unlawful conspiracy hereinbefore described, resort to the shops, depot, and station grounds and premises of plaintiff in large numbers and inspect and intimidate all persons who they suspect to be persons about to enter the employ of the plaintiff, and importune and threaten them, so that it is practically impossible for the plaintiff to find a sufficient number of qualified men to enter its shops and perform the necessary work therein; that the defendants, their agents, associates and sympathizers, come to plaintiff's premises upon the right of way, tracks and station grounds and upon the streets in close proximity thereto, and undertake to persuade those about to enter the service of the plaintiff not to do so, and threaten such persons with violence, all for the purpose of intimidating and thereby pre- [fol. 21] venting the plaintiff from securing employes for the lawful and orderly prosecution of its business as an interstate carrier of persons, property and United States mail.

20. Plaintiff alleges and charges that it is the purpose and policy of the said defendants, by force and threats of violence to prevent the plaintiff from doing or having done the character of work which had been performed by the said employes so going upon said strike and members of said defendant organizations, and all for the purpose of preventing the plaintiff from performing its duty as a carrier of traffic, both state and interstate, in order that the plaintiff might be compelled to pay a scale of wages and adopt rules of work satisfactory to the defendants, contrary to the decisions of the United States Railroad Labor Board.

Forasmuch Therefore, as your plaintiff is without remedy save in a Court of Equity, and to the end that said defendants and each of them and all persons who may now or hereafter confederate with them, whose names are to your plaintiff unknown, and all persons, members of the said various labor organizations, associations and brotherhoods herein named, may be required to make full, complete and direct answer hereto, but not under oath, the answer under oath being hereby waived; the plaintiff prays that the said defendants, and each of them, and each and all of their attorneys, servants, agents, associates, members and employes, and all persons acting in aid or in conjunction with them, or any of them, may be enjoined and restrained, temporarily until final hearing, and perpetually thereafter, from in any manner interfering with, hindering, obstructing or stopping the business of the plaintiff, or its agents, servants or employes engaged in the maintenance, conduct or operation of its business; from preventing or attempting to prevent any person or persons from freely entering into or continuing in plaintiff's service, or from in any manner agreeing or combining or conspiring together to injure or destroy, hinder or interfere with or obstruct the business of the Plaintiff, its officers, agents or employes; from compelling or inducing or attempting to compel or induce, by use of threats, intimidation, violence, fraud or deception any person now in the employ of the plaintiff to cease performance of his or their duties or to fail to enter or continue in [fol. 22] its service; from directing or permitting any other person or persons under the control of the said defendants to interfere with or prevent by threats, intimidation, fraud or violence any person from entering or continuing in the employ of plaintiff; from in any manner hindering, obstructing or interfering with plaintiff's employes in going to or from their work; from commanding, directing, or inducing any of plaintiff's employes in going to or from their work; from commanding, directing, or inducing any of plaintiff's employes, singly or en masse, to cease to perform their several duties as such employes; from inducing, persuading or directing the employes of plaintiff to cease or fail to perform and carry out their respective contracts of employment; from knowingly enticing such employes, present or future, to leave plaintiff's service without its consent; from trespassing or entering upon the grounds or premises of plaintiff for the purpose of interfering therewith or of hindering or obstructing its business, or for the purpose of compelling or inducing by threats or intimidation, violent or abusive language, or

undue persuasion any of plaintiff's employes to refuse or fail to perform their duties as such, and from compelling or inducing or attempting to compel or induce, by threats or intimidations, or abusive or violent language, any of plaintiff's employes to leave its service, or to fail or refuse to perform their duties as such employes; from compelling or attempting to compel by like cause or causes any person desiring to seek employment with the plaintiff from so accepting the employment; from ordering, directing, aiding, counseling, assist*ant*ing or abetting any other person or persons, company or organizations to do or cause to be done any of the things aforesaid; from engaging in the practice commonly known as "picketing," that is to say, from assembling or causing to be assembled numbers of men in sympathy with the said strike upon or in proximity to the property of plaintiff where its present employes are required to work, from patrolling the premises of the plaintiff, and from accosting employes as they go in and out of their respective places of work and by threats, undue persuasion or otherwise, attempting to persuade, intimidate or prevent said employes from entering upon their duties, or continuing there, or from ordering, directing, aiding or assisting in any way, or in any way abetting any person in committing the said unlawful acts; from congregating upon or maintaining at or near any of the yards, shops, depots, terminals, tracks, waylands, roadbeds, or premises of the plain-[fol. 23] tiff, any guard, pickets, or persons to perform any act of guarding, patrolling or picketing any of such yards, shops, depots, terminals, tracks, waylands, or premises, from threatening in person or by telephone, or in any manner intimidating or making suggestions of danger or threats of violence of any kind to any servants or employes of plaintiff or persons desiring to enter its service or employment; from in any manner combining or conspiring, commanding or directing the doing by any person of any injury or bodily harm to any of the servants, agents or employes of plaintiff, or to any persons desiring to seek employment with the plaintiff; from frequenting or going to places of residence of the employes of the plaintiff for the purpose of intimidating, coercing or threatening such employes, or in any manner by violence, intimidation or threats, or putting them in the fear or suggestion of danger to induce them to leave the service of plaintiff or to refuse to perform their duties for the plaintiff, or to refuse to enter the service of the plaintiff; from in any manner hindering, obstructing or impeding the operation of the trains of the plaintiff, or the movement of freight and passenger traffic, and the United States mails, or performing or discharging other duties as a carrier; from endeavoring illegally to induce persons not to deal with the plaintiff, its agents or employes, or from in any manner injuring or destroying the property of the plaintiff, or by any such means aforesaid hindering, obstructing or interfering with its business as a carrier of interstate commerce; and from ordering, directing, aiding, counseling, assisting or abetting any person, association, or organization to do or cause to be done any of the things aforesaid until the further order of this Court, and that the plaintiff may have such other relief

in the premises as the nature of the case may require and to your Honor shall seem meet.

May It Please Your Honor to grant the plaintiff, not only a writ of injunction, conformable to the prayer, but also a writ of subpœna of the United States of America, directed to the said defendants, and each of the-, commanding them on a day certain to appear and answer this Petition, and to abide by and perform such orders and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

And Further that a temporary restraining order may be issued restraining the said defendants and each of them in accordance with [fol. 24] the Prayer for a preliminary and perpetual injunction, pending the hearing on said application for a preliminary injunction; that said temporary restraining order may be served on each of said defendants named and that as to those unknown and unnamed the same may be ordered and decreed by this Court to be and become effective and binding upon the publication of the same in one or more public newspapers to be designated in the order of this Court, published on the lines of plaintiff's railroads, and upon and after the posting of a copy of the same at one or more depots or stations on said line of railroad, as may be designated by this Court; that the Marshal of this Court be directed immediately to publish and post notices of said injunction and restraining order; that he be authorized and directed especially to commission a sufficent number of deputy marshals to make said order in all respects promptly effective and to continue the same in effect until the further order of this Court.

Chicago, St. Paul, Minneapolis and Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN

[Title omitted]

ANSWER—Filed Aug. 18, 1922

Now comes the defendants, and each of them, and for answer to the Bill of Complaint of the plaintiff herein:

1. Admit the allegations contained in Paragraph One of the said Bill of Complaint.

2. Admit the allegations contained in Paragraph Two of the said Bill of Complaint.

3. Admit that the suit is one of a civil nature arising under the constitution and laws of the United States, but deny any knowledge or information sufficient to form a belief as to the amount in con- [fol. 25] troversy and hence puts the plaintiff to its proof in that

regard, and deny the existence of any unlawful conspiracy or wrongful or illegal acts on the part of these defendants.

4. Admit that the officers named in Paragraph Four of the said Bill of Complaint are so correctly named and designated and connected as stated with the different organizations mentioned in the said paragraph, but deny that the said officers of the said organizations therein named control the conduct and action of the members of each of the said organizations, and deny the existence of any illegal conspiracy or combination on the part of these defendants, and deny that they or any of them threatened and conspired to do any of the unlawful acts and things described in the said bill of complaint.

5. Admit the allegations contained in Paragraph Five of the said Bill of Complaint.

6. Admit the allegations contained in Paragraph Six of the said Bill of Complaint.

7. Admit the allegations contained in Paragraph Seven of the said Bill of Complaint.

8. Admit the allegations contained in Paragraph Eight of the said Bill of Complaint.

9. Admit that the plaintiff's duty and right to engage in and carry on the business of a common carrier for hire in interstate and intrastate commerce constitutes and is in and of itself a corporation right, but deny that the said right is now being seriously interfered with by these defendants, or any of them, and deny that the said plaintiff is suffering or will suffer irreparable injury on account of any acts committed by the said defendants, or any of them; deny that there is no adequate remedy at law, and allege that the defendants have committed no acts against the said plaintiff tending to result in the destruction of, interference with, or interruption of plaintiff's business, to the damage of the plaintiff in any sum whatsoever.

10. Deny that these defendants are affected in any way by the provisions of the Act of Congress commonly known as the Sherman Act, and also by the provisions of Section 16 of the Act commonly known as the Clayton Act, and deny that the defendants, or any of them have entered into a conspiracy for any of the purposes alleged in the said Bill of Complaint, and deny that they are adopting any unlawful means to prevent the plaintiff from employing men to work in its shops, yards, round-houses or terminals, or to interfere with [fol. 26] the operation of the business of the plaintiff in any degree whatsoever.

11. Admit the allegations contained in Paragraph Eleven of the said Bill of Complaint relating to the decision of the United States Railroad Labor Board by which the said Board prescribed, effective July 1st, 1922, a scale of wages for the different classes of employees to which the different defendants belong, but deny that the said defendants, or any of them, are unlawfully conspiring or taking any unlawful action or indulging in any unlawful conduct to prevent the

plaintiff from applying the scale of compensation prescribed by the United States Railroad Labor Board by the terms of its said decision, or that they are attempting to coerce the plaintiff in any manner whatsoever.

12. Further answering the said Bill of Complaint, the defendants and each of them allege that they are without any knowledge or information sufficient to form a belief as to whether or not the plaintiff has at all times complied with all of the decisions of the United States Railway Labor Board, as alleged in Paragraph Twelve of the said Bill of Complaint, and puts the plaintiff to its proof in that regard.

13. Deny that the calling of the strike referred to in Paragraph Thirteen of the said Bill of Complaint is an unlawful conspiracy on the part of these defendants or the respective labor organizations to which they belong, or that the defendants or the respective labor organizations to which they belong are unlawfully preventing a movement of traffic or in any way interfering with the business of the plaintiff.

14. Admit that on the 1st day of July, 1922, the defendants left the employ of the plaintiff at one and the same time and in concert, pursuant to the strike order alleged, but deny that the leaving of the employment of the plaintiff by these defendants, and the members of their respective labor organizations, at the same time and in concert, was illegal and in the nature of an unlawful conspiracy, and allege that the said defendants, and each of them, and the members of the respective labor organizations, were within their lawful rights in so leaving the employment of the plaintiff in concert.

15. Deny the allegations contained in Paragraph Fifteen of the said Bill of Complaint.

16. Admit that the defendants and large numbers of the plaintiff's employees, members of the organizations commonly known as the [fol. 27] Federated Shop Crafts, refused and ceased to perform their several duties while in the employ of the plaintiff on the 1st day of July, 1922, but deny that the said refusal to work and cessation of employment is an unlawful conspiracy.

17. Deny that the defendants, or any of them, are seeking by force or intimidation to prevent the plaintiff from the performance of its duties as alleged in Paragraph Seventeen of the said Bill of Complaint.

18. Further answering the said Bill of Complaint, the defendants and each of them admit that certain of the defendants, singly and in concert, have congregated upon the streets in close proximity to the yards and shops of the plaintiff, but allege that they so congregated for the purpose of recommending, advising or persuading others by peaceful means to terminate their relation of employment with the plaintiff, and that certain of the defendants have attended at various places in a lawful and orderly manner for the purpose of furthering their interest as members of the said labor organizations

and as individuals. Defendants further allege that they are without sufficient knowledge or information to form a belief as to whether or not the railway system of the plaintiff is being adversely affected by their cessation of employment, but allege that if such be the case, it is not the result of any unlawful acts on the part of the defendants, their associates or sympathizers.

19. Further answering the said Bill of Complaint of the plaintiff herein, the defendants deny that they, or any of them, have been interfering with the employees of the plaintiff or with the plaintiff's business, or that they, or any of them, have been doing any unlawful picketing or have been guilty of intimidation or threats of violence at Superior, Wisconsin, or any other place within the said Western District of Wisconsin, as alleged in the said Bill of Complaint, or that they have maintained a system of espionage against the plaintiff, its officers, employees and yards, terminals and shops.

20. Further answering the said Bill of Complaint of the plaintiff herein, the defendants, and each of them, deny each and every allegation in the said Bill of Complaint contained not expressly admitted or qualified herein.

21. Further answering the said Bill of Complaint of the plaintiff herein, defendants allege that at no time since the strike order mentioned in the complaint went into effect has there been any unlawful picketing or intimidation or threats indulged in by these de- [fol. 28] fendants, and that they have in no way conspired to obstruct the usual conduct of the business of the plaintiff, and that, upon information and belief, there has existed no such conditions as alleged in the said bill of complaint, or as would warrant the continuance in force of the preliminary restraining order granted the plaintiff upon the filing of the said bill of complaint and accompanying affidavits; that, upon information and belief, defendants aver that plaintiff procured the preliminary restraining order herein solely for the purpose of prejudicing the public against the cause of the defendants and the respective striking crafts or unions to which they belong.

22. Further answering the said Bill of Complaint, defendants allege that certain of them, and other members of the crafts or labor unions to which they belong, singly, and in small numbers, have congregated in the public streets of the city of Superior, and in public places in the said city, in proximity to the yards, shops and terminals of the plaintiff, and that they have recommended, advised and persuaded employees of the plaintiff to cease to perform any work or labor for the plaintiff, and that this was done in a peaceable manner; that they have attended at such places where they might lawfully be, both singly and in small numbers, for the purpose of peacefully obtaining or communicating information, and peacefully persuading employees to abstain from work and prospective employees to refrain from work.

23. Further answering the said Bill of Complaint, defendants allege that in order to preserve their lawful rights, it is necessary for

a number of representatives of the different crafts to which they respectively belong, to engage, singly and in sufficient numbers, in recommending, advising and persuading employees of the plaintiff to cease to perform work or labor for the plaintiff, and to persuade and recommend prospective employees from engaging in work for the plaintiff, and for the purpose of communicating and obtaining information for the reason that only members of the respective crafts are able to tell who of their number have remained in the service of the plaintiff, and what craft or line of work or trade prospective employees are seeking to engage in.

Wherefore, Defendants pray the Court that the Bill of Complaint of plaintiff herein be dismissed, and that the defendants have their costs and disbursements; and failing this, that if a temporary restraining order issue, the same be so worded that the rights and privileges [fol. 29] of the defendants guaranteed them by the constitution and laws of the United States, be protected, especially with reference to their rights of peaceable assemply, freedom of speech, and peacefully persuading present employees of the plaintiff and prospective employees of the plaintiff, to refrain and abstain from working for the plaintiff, in view of the strike order mentioned in the said Bill of Complaint, and that they, and the organizations to which they belong, may go where present employees or prospective employees may be in sufficient numbers representing each craft or labor organization, for the purpose of peacefully imparting information to such employees, present or prosepective, and using peaceable persuasion or entreaty, such numbers, however, not to exceed the number of persons to be so addressed at any single place.

Cadigan & Cadigan, Solicitors for the Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUBPŒNA

The President of the United States of America to the Defendants and each of them, Greetings:

You are hereby commanded to appear before the Judge of the District Court of the United States of America, for the Western District of Wisconsin, to answer a bill of complaint exhibited against you in said Court in a suit in equity by the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation, plaintiff, and to further do and receive what the said Court shall have considered in this behalf and this you are not to omit on the penalty on you and each of you of Two Hundred Fifty ($250.00) Dollars.

Witness the Honorable Claude Z. Luse, Judge of the District Court of the United States, for the Western District of Wisconsin, at the

City of Superior, on the twentieth day of July, 1922, and of the Independence of the United States the one hundred forty-seventh.

William H. Comerford, Clerk. H. E. Ticknor, Deputy. (Seal.) R. L. Kennedy, Powell & Sprowls, Solicitors for Plaintiff.

[fol. 30–32] IN UNITED STATES DISTRICT COURT

CLERK'S MEMORANDUM

The defendants and each of them above are required to file their answer or other defense in the above cause in the Clerk's office of this Court on or before the twentieth day after service hereto exclusive of the day of said service, otherwise the bill aforesaid may be taken pro confesso.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

[Title omitted]

TEMPORARY RESTRAINING ORDER OF JULY 20, 1922

[fol. 33] Restraining Order

To each of the Above-named defendants respectively and to all other persons affiliated, acting, combining, conspiring, agreeing or co-operating with them:

Whereas, In the above named cause it has been made to appear on verified bill of complaint filed herein, which was on this 20th day of July, 1922, presented to the Honorable Claude Z. Luse, Judge of the United States District Court, for the Western District of Wisconsin, that a restraining order preliminary to hearing upon application for a preliminary injunction is proper because of the allegations thereof of immediate and irreparable injury, and that prima facie the plaintiff is entitled to an order restraining the defendants herein, and those affiliated, acting, co-operating, confederating, combining, conspiring, agreeing or arranging with them from doing the acts therein complained of and threatened to be committed,

Now therefore, On motion of the plaintiff it is ordered that the defendants appear before the District Court of the United States, for the Western District of Wisconsin, at a session thereof to be held in the court room in the City of Superior, State of Wisconsin, in said District, upon the 29th day of July, 1922, at ten o'clock in the forenoon of said day then and there to show cause, if any there may be, why the preliminary injunction prayed therein should not issue; and it appearing to the court that the injuries for the prevention of

which this restraining order in issued are injuries to, obstruction of, [fol. 34] and interference with plaintiff's business as a common carrier in interstate commerce, and as a carrier of the United States mails; that such injuries are irreparable because they cannot be compensated for in damages and may subject plaintiff to fines and forfeitures; that there is danger of such immediate and irreparable injury being caused the plaintiff before said application for a preliminary injunction can be heard unless said defendants are, pending said hearing, restrained as hereinafter set forth.

This restraining order is granted without notice because such injuries are liable to occur before a hearing upon notice can be had.

The plaintiff having executed a bond, approved by the Clerk of this court, in the penal sum of Five Thousand ($5,000.00) Dollars, securing the said defendants against all loss or damage which may result from the issuance of said order, if it should be finally determined that the same was improperly issued or that may be awarded to them by reason of the granting of said order,

It is ordered, That you, and each of you, the defendants herein named, and all other persons affiliated, acting, co-operating, confederating, combining, conspiring, agreeing or arranging with you, be restrained from in any manner interfering with, hindering, obstructing, or stopping the business of the plaintiff or its agents, servants, or employes in the maintenance; conduct or operation of its business; from preventing or attempting to prevent any person by threats, intimidation, force or violence from entering into or continuing in the plaintiff's service; from compelling or inducing or attempting to compel or induce by threats, intimidations, force, violence, fraud or deception, any person now in the employ of the plaintiff to cease performance of his duties or to fail or refuse to enter or continue in its service; from commanding or directing or permitting any person under the control of the said defendants or any of them to interfere with or prevent by threats, intimidations, fraud or violence any person from entering or continuing in the employment of the plaintiff; from in any manner or in any way whatsoever by the use of threats of personal injury or intimidation or suggestion of danger or threats of violence of any kind, hindering, obstructing or interfering with any person in the employ of the plaintiff in going to or from his work; from trespassing or entering upon the grounds or premises of plaintiff for the purpose of interfering therewith or hin- [fol. 35] dering or obstructing its business; from ordering, directing, aiding, counseling, assisting, or abetting any other person or persons, company or organization to do or cause to be done any of the things aforesaid; from engaging in the practice commonly known as picketing, that is to say, from assembling, or causing to be assembled men or women in sympathy with the said strike at points of ingress and egress to or from or at or near any of the yards, premises or shops of plaintiff or in proximity to plaintiff's property where its present employes are required to work, or on streets, alleys, paths or ways leading to and in the vicinity of the premises of the plaintiff, and accosting plaintiff's employes as they go in and out of their respective places of work, and by threats of personal injury, or intimidation, or

force, or violence, or by putting in fear, or by suggestion of danger, attempting to persuade or intimidate or prevent said employes from entering upon their duties, or continuing therein, or preventing any other person by like means from entering into the employ of the plaintiff; except that one single representative of all said defendants may be maintained at each of the points of ingress and egress to and from said premises now and ordinarily used or hereafter established by the plaintiff, but for the purpose only of announcing the strike and peaceably persuading the employes and would-be employes to join defendants in it; from ordering, directing, aiding, or assisting in any way, or in any way abetting any person in committing the said unlawful acts; from patrolling any such yards, shops, depots, terminals, tracks, way-lands or premises, from threatening, or in any manner intimidating, or making suggestions of danger or threats of violence of any kind to any servant or employes of plaintiff, or persons desiring to enter its service or employment, from in any manner combining or conspiring, commanding or directing the doing by any person of any injury or bodily harm to any of the servants, agents or employes of the plaintiff; from going singly or collectively to the homes, abodes, or places of residence of the servants or *or* employes of the plaintiff or telephoning or otherwise communicating with them for the purpose of intimidating, coercing, or threatening them in any manner by violence, intimidation, or threats or putting them in fear or by suggestion of danger to induce them to leave the service of the plaintiff or to refuse to perform their duties for the plaintiff, or to fail or refuse to enter the service of the plaintiff; from in any manner hindering, obstructing or impeding the operation of the trains of [fol. 36] plaintiff in their ingress or egress to or from the premises of the plaintiff; from in any way hindering, obstructing, or impeding the operation of the trains of plaintiff or the movement of freight and passenger traffic and United States mail, or performing or discharging other duties as a carrier; from in any manner destroying or injuring property of the plaintiff, or by any of such means aforesaid hindering, obstructing or interfering with the carrying on of its business of a carrier of interstate commerce; and from ordering, directing, aiding, counseling, assisting or abetting any person, company or organization to do or cause to be done any of the things aforesaid until the further order of the court.

It is further ordered, that the defendants in this action and all persons associating, combining or conspiring with them be and they are hereby ordered to absolutely desist and refrain from doing or attempting to do any of the acts so restrained, upon about or in proximity to the shops, roundhouses, depots, tracks, yards, or other premises of the complainant at Superior, Itasca, Hudson, Elroy, Spooner, Altoona, Ashland or Eau Claire in the Western District of Wisconsin.

And it is further ordered that a copy of this order certified under the hand of the Clerk in the seal of this Court be served upon each of the defendants to be restrained herein, and upon all other persons affiliated, acting, co-operating, confederating, combining, conspiring, agreeing, or arranging with them in said unlawful acts; that copies

of the writ issued hereon shall be posted in such manner as shall seem appropriate, and a copy published in such newspapers as may be deemed proper, and that this order shall be taken as binding upon all persons who have knowledge of the contents and purport hereof.

This order signed and issued this 20th day of July, 1922, at 2:30 o'clock P. M.

By the Court:

C. Z. Luse, Judge. (Seal.)

[fol. 37] IN UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT,
Western District of Wisconsin:

CERTIFICATE OF CLERK

I, William H. Comerford, Clerk of the District Court of the United States, for the Western District of Wisconsin, do hereby certify that the above and foregoing is a true and correct copy of the restraining order made and entered of record on July 20th, A. D. 1922, in the case of Chicago, St. Paul, Minneapolis & Omaha Railway Company, plaintiff vs. R. A. Henning, et al., defendants, as the same is now of record in the office of said Court.

Witness my hand and official seal at my office in the City of Superior, in said District, this 21st day of July, A. D. 1922.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER OF JULY 29TH CONTINUING PRELIMINARY RESTRAINING ORDER IN EFFECT TO AUGUST 8TH, 1922—Filed July 29, 1922

Now on this 29th day of July, A. D. 1922, at 10 o'clock A. M., being the time fixed by order of the court heretofore made for the hearing upon the granting of the preliminary injunction in the Powell & Sprowls, its attorneys, and each and every one of the deabove entitled action, and the plaintiff above named, appearing by fendants above named appearing by Cadigan & Cadigan, their attorneys, and the defendants by their counsel having requested a continuance of said hearing for a period of ten days, and the matter having been fully presented to the court, and good cause therefor having been shown, to-wit: the request of the defendants that they be given further time to prepare for said hearing, and the plaintiff having consented thereto,

It is ordered, that the temporary restraining order heretofore made and entered in this action on the 20th day of July, 1922,

shall be and the same is hereby continued in full force and effect [fol. 38] until and including the 8th day of August, 1922, at 10 o'clock, A. M., of which all parties being here represented in court shall take due notice.

It is further ordered, that the hearing on the order to show cause why a preliminary injunction shall not issue in this cause, shall come on for hearing before the District Court of the United States for the Western District of Wisconsin, at a session thereof to be held in the courtroom in the City of Superior, State of Wisconsin, in said District upon the 8th day of August, 1922, at 10 o'clock in the forenoon of said day, of which all parties hereto shall take due notice.

Dated July 29, 1922.

By the Court:

C. Z. Luse, Judge.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO PETITION IN EQUITY—Filed July 29, 1922

Now comes the plaintiff above named and, with leave of the court first had and obtained, amends its original bill filed in this cause on the 20th day of July, 1922, by inserting in paragraph ten of said bill between the words "Hudson" and "Elroy" the words "Village of North Hudson" and state that the shops of the said Chicago, St. Paul, Minneapolis & Omaha Railway Company are located within the said Village of North Hudson, and re-affirm all the allegations of said original complaint, and hereby make the same applicable to the said properties of the said plaintiff, located at or in the Village of North Hudson, State of Wisconsin.

Wherefore, plaintiff prays that the temporary restraining order heretofore entered in said cause be amended to include the said properties of the plaintiff at North Hudson, and that it be made in all respects applicable thereto.

Chicago, St. Paul, Minneapolis & Omaha Railway Company,
by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

AMENDMENT TO RESTRAINING ORDER—Filed July 29, 1922

Now on this 29th day of July, 1922 a verified amendment to the bill of complaint in the above entitled action having been filed herein, and having been presented to the Honorable Claude Z. Luse,

Judge of the United States District Court for the Western District of Wisconsin, setting forth the fact that the said Bill of Complaint and Restraining Order as originally made, did not include the Village of North Hudson, Wisconsin.

Now, therefore, it is ordered, that the Original Restraining Order issued herein be and the same is hereby amended to include the shops, roundhouses, depots, tracts, yards and other premises of the complainant located at the Village of North Hudson, State of Wisconsin, and that the same acts forbidden, enjoined and retrained on the part of the defendants and all persons affiliated, acting, co-operating, confederating, conspiring, combining, agreeing or arranging with them, be and the same are hereby forbidden, enjoined and restrained at said place.

It is further ordered, That a copy of the Original Restraining Order, with a copy of this amendment attached thereto, be served upon the said defendants or any of them that may be found at the Village of North Hudson, Wisconsin, and that all of the defendants herein show cause on the 8th day of August, 1922 at 10 o'clock A. M. why a preliminary injunction should not be issued in accordance with the prayer of the complaint and amendment thereto.

This amended restraining order signed and issued this 29th day of July, 1922 at 2:30 o'clock P. M.

C. Z. Luse, Judge.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING RESTRAINING ORDER FOR 10 DAYS TO AUG. 18, 1922—Filed August 8, 1922

Now on this 8th day of August, A. D. 1922, at 10 o'clock A. M., being the time fixed by order of the court heretofore made on July 29, 1922, for the hearing upon the granting of a preliminary injuction in the above entitled action, and the plaintiff above named, appearing by Powell & Sprowls, its attorneys, and each and every one of the defendants above named, appearing by Cadigan & Cadigan, their attorneys, and the defendants, by their counsel, have requested a further continuance of said hearing for a period of ten days, and the matter having been fully presented to the court, and good cause therefor having been shown, to wit: the request of the defendants that they be granted further time to prepare for said hearing, and the plaintiff having consented thereto.

It is ordered that the temporary restraining order herein originally made and entered in this action on the 20th day of July, 1922, and continued in effect by order of the court made and entered on the 29th day of July, 1922, and as amended July 29th, 1922 shall be and the same is hereby continued in full force and effect until the

further order of this court, of which all parties being here represented in court shall take due notice.

It is further ordered, that the hearing on the order to show cause why a preliminary injunction shall not issue in this action, shall come on for hearing before the District Court of the United States, for the Western District of Wisconsin, at a session thereof to be held in the Courtroom in the City of Superior, State of Wisconsin, in said district, upon the 18th day of August, 1922, at 10 o'clock in the forenoon of said day, of which all parties hereto shall take due notice.

Dated August 8, 1922.

By the Court:

C. Z. Luse, Judge.

[File endorsement omitted.]

[fols. 41–43] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

[Title omitted]

INJUNCTION—Filed Aug. 18, 1922

[fol. 44] The President of the United States of America to the above-named defendants, individually and as representatives of the members of the unions and organizations aforesaid, and to the members of each and all of said unions and organization aforesaid and to all persons combining, conspiring, agreeing, affiliating, acting or arranging with them or any of them and to all persons whomsoever, Greeting:

Whereas, at a hearing duly held on August 18th, 1922, in the City of Superior, Wisconsin, pursuant to an adjournment duly ordered, at which hearing the plaintiff and the defendants duly appeared, it was shown to the Court, and the Court having found:

That the plaintiff is engaged as a common carrier in the transportation of interstate commerce and of United States mails; that a strike now exists on the part of the said named defendants and the said labor unions represented by said defendants against the plaintiff; that this temporary injunction is necessary to prevent irreparable injury to the property and property rights of the plaintiff; that the injuries, for the prevention of which this temporary injunction is issued are injuries to and interference with plaintiff's business as a common carrier of interstate commerce and as a carrier of the United States mails; that such injuries are irreparable because they cannot be compensated for in damages and may subject plaintiff to fines and forfeitures; that plaintiff has no adequate

remedy at law, and that plaintiff is entitled to the issue of this injunction:

And the plaintiff having duly filed a duly approved bond in the penal sum of five thousand ($5,000) dollars, securing said defendants and such other persons as may be restrained by this injunction against all loss or damage which may result from the issue of this injunction, if it should finally be determined that this injunction was improperly issued;

Now, therefore, you, and each of you, are hereby strictly enjoined until the further order of the Court to absolutely desist and refrain from

[fol. 45] (1) In any manner interfering with the free use and occupation by plaintiff of any and all of its property or premises of every kind or character, and from interfering with, hindering, obstructing or stopping any of the business of plaintiff or its agents, officers and employes in the operation of plaintiff's railroad or any department or part thereof; and restraining them from such interference.

(2) In any manner whatsoever, by use of threats, personal injury suggestions of danger, of threats of violence of any kind, interfering with, hindering, obstructing or stopping any person engaged in the employ of the plaintiff, or any person desiring to enter its employment in connection with its business or the operation of its line of railroad in the Western District of Wisconsin.

(3) Inducing or attempting to induce or compel by threats, intimidation, force, or violence, or by the fear or suggestion of harm or danger, any person so employed or desiring such employment so as to cause them to refuse to perform any of their duties as employes, if employed, or to enter such employment, if they so desire.

(4) Interfering with the employes of said plaintiff in going to or from their daily work.

(5) Going to the homes of said plaintiff's employes, either singly or collectively, or any of them, for the purpose of intimidating them, or coercing any or all of them to leave the employment of the plaintiff, and from intimidating or threatening by letters, telephone, or in any manner, to wives, families or properties of said employes.

(6) Protecting, aiding or assisting any person or persons in committing any of said acts so restrained as aforesaid.

(7) Trespassing on the property of plaintiff.

(8) Assembling, loitering or congregating in or on any street, alley or path leading to and in the immediate vicinity of the shops, roundhouses, depots, tracks, office building or buildings, yards or any other premises of plaintiff at Superior, Itasca, Hudson, the Village of North Hudson, Elroy, Spooner, Altoona, Ashland, Eau Claire or elsewhere in the Western District of Wisconsin, for the

purpose of doing or attempting to do any of the acts so restrained or forbidden herein.

(9) Picketing or maintaining at or near the premises of the plaintiff or on or near the streets, alleys, paths, or roads leading [fol. 46] to the premises of the plaintiff, any representative or representatives, except that only one representative of all of said defendants may be maintained at each of the points of ingress and egress to said premises now and ordinarily used or hereafter established, but for the purpose only of announcing the strike and peaceably persuiding the employes and would-be employes to join defendants in it, those representatives not to be interfered with by plaintiff, or anyone acting for it, so long as such representatives are peaceful and law abiding.

(10) Doing any act or thing whatever in furtherance of any conspiracy or combination among them or any of them, to obstruct or interfere with plaintiff, its officers, agents or employes in the free and unrestrained control and operation of its railroad and the conduct of its business, and from defacing, tearing down, or in any manner or way mutilating any copies of any writs issued or posted hereunder.

(11) From posting or circulating in the immediate vicinity of plaintiff's property, or homes of plaintiff's employes, in any manner whatsoever, any written or printed notice which shall by name designate any employe of plaintiff as a "scab" or "strike breaker."

(12) By means of any handbills, banner or printed device, or by means of any noise or musical instrument of any character, causing or attempting to cause people to assemble in or about the home or place of abode of any employe of plaintiff for the purpose of intimidating such employe or holding such employe or his family up to scorn or ridicule.

(13) Using to or in reference to and in the presence of any employe of plaintiff, or the members of his family, any vile, abusive or obscene language, or any language likely to produce an assault.

This writ of temporary injunction, signed this 18th day of August, 1922, at 10 o'clock A. M., shall continue until further order of the Court herein and is and shall be binding upon all persons who have knowledge of the contents and purport hereof.

Hereof fail not under pain of penalty that will fall upon your failure to obey this injunction.

Witness the Honorable C. Z. Luse, Judge of the District Court of the United States, for the Western District of Wisconsin, and the seal of said Court, this 18th day of August, 1922. Issued at Superior, [fol. 47] Wisconsin the day and year last aforesaid.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy.
(Seal of Court.)

Let the foregoing writ issue. C. Z. Luse, Judge. 10 A. M. Aug. 18, 1922.

UNITED STATES DISTRICT COURT

PETITION FOR RULE TO SHOW CAUSE, ETC.—Filed Aug. 18, 1922

In re Contempt of Court

To the Honorable C. Z. Luse, Judge of the United States District Court for the Western District of Wisconsin:

Comes now the complainant, Chicago, St. Paul, Minneapolis & Omaha Railway Company and files this petition herein, and states that the papers, files and proceedings in this cause show that on the 20th day of July, 1922, the said Chicago, St. Paul, Minneapolis & Omaha Railway Company filed in this court a bill in equity in which the said Railway Company was plaintiff and R. A. Henning, et al., were defendants, praying that an injunction issue against said defendants; that on the 20th day of July, 1922, as shown by the files, pleadings and proceedings in this cause, this court entered a temporary restraining order, which said restraining order is still in full force and effect, and has been at all times since said date.

That copies of said restraining order were duly published and posted and were personally served upon each and all of the named defendants in said action in the Western District of Wisconsin by the marshal or deputy marshal of this court, all prior to the date of the commission of the acts hereinafter referred to, as will more fully appear from the return of the United States marshal of this court on file in said cause, reference being hereby made thereto [fol. 48] and to all papers, files and proceedings in said equity cause.

Your petitioner further shows the court and alleges upon information and behalf that since the issuance and service of the said restraining order aforesaid, and with full knowledge thereof and in defiance of the terms of said order and in contempt of the authority of the court; that certain parties, to-wit: Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk, have willfully, wrongfully and deliberately disobeyed and violated the said temporary restraining order, all of which more fully appears from the affidavits of Albert Larson, and W. Y. Burton, which are hereto attached and marked Exhibits "A" and "B," and made a part hereof; that this application is made for the purpose of securing a rule against the parties above named to show cause why they should not be punished for contempt of this court, and for such further order in the premises as are just and proper.

Wherefore your petitioner prays that this court issue a rule against the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Nat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk requiring them to appear before this court and show cause why they should not be

committed for contempt and violation of the temporary restraining order as hereinbefore stated.

Chicago, St. Paul, Minneapolis & Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

Jurat showing the foregoing was duly sworn to by John S. Sprowls omitted in printing.

[fol. 49] EXHIBIT "A" TO PETITION FOR RULE TO SHOW CAUSE—Filed Aug. 18, 1922

STATE OF WISCONSIN,
County of St. Croix, ss:

I, Albert Larson, being duly sworn, depose and say that I am employed as General Car Foreman by the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and am located at the car shops of said company, that since the serving and posting of temporary restraining order, there are at the points of entrance to shop grounds of said company a number of strikers presumably acting as pickets; that each afternoon at 4:30 large crowds of men, women and children assemble yelling and hooting at the employees as they leave and endeavor to intimidate employes of said company and induce them to refrain from work; that at 4:30 P. M. August 1, 1922, which is the time of closing work at said shops, there were at the main entrance gate of said shops approximately 50 men, women and children yelling and hooting, and that among said strikers was Clarence Michaelson, formerly employed by the Chicago, St. Paul, Minneapolis & Omaha Railway Company as an apprentice, and now out on strike, who called several of the employes as they left "Scabs," "Low down life scabs"; that about 9:40 A. M. August 2, 1922, about 40 or 50 strikers were assembled on the railway tracks entering the shop yards of said company among them were Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniel, Joe Richie, Matt Anderson, John Hagen and Arley Martin, all of whom were formerly [fol. 50] employed at the shops of said company, and are now out on strike, and that these strikers were assembled for the purpose of intimidating and preventing men, desirous of securing employment with said company, from entering upon such employment.

Albert Larson.

Subscribed and sworn to before me this third day of August, 1922. Lynn H. Ashley, Notary Public, County of St. Croix, Wisconsin. My commission expires Jan. 13, 1924. (Notarial Seal.)

EXHIBIT "B" TO PETITION FOR RULE TO SHOW CAUSE—Filed Aug. 18, 1922

STATE OF WISCONSIN,
County of St. Croix, ss:

I, W. Y. Burton, being duly sworn, depose and say that I am and have been for many years in the employ of the Chicago, St. Paul, Minneapolis & Omaha Railway Company as Foreman; that each day at 4:30 P. M. at the close of work when I and other employes of said company are leaving there are congregated at the main entrance gate to the shops from 50 to 60 men, women and children in violation of the temporary restraining order; that the strikers congregated there and wives of strikers are yelling and hooting and have on numerous occasions called me scab; that on the afternoon of August 1, 1922, when I was leaving the shops among the crowd congregated at the main entrance gate was Joe Peterson, formerly employed as an apprentice by said company and now out on strike, and who was wearing a star evidently having been appointed by the village of North Hudson as an officer, yelled "Dirty scab," and Clarence Michaelson, formerly in the employ of said company and now on strike standing there wearing the uniform of a U. S. soldier, yelled at me and other employes, "Dirty low life scabs," that as we passed the North Hunson school house, which is strike headquarters, Walter Cronk, for-
[fol. 51] merly employed by said company, and now on strike, yelled, "You are a fine looking bunch of scabs"; that each morning at about 7:00 A. M. there are congregated at the main entrance gate to said shops a large crowd of strikers, which I estimate at from 35 to 40, for the purpose of intimidating men desirous of obtaining employment in the shops of said company; that on the morning of July 27, 1922, as I was entering the main entrance gate to said shops at about 7:00 A. M. there was a large crowd of strikers congregated there and some one yelled, "Scab," and when I looked around to see who it was, they kept still and no one made a sound; that on the evening of August 2, 1922, at 6:30 P. M. I was at the Hudson Depot of the Chicago, St. Paul, Minneapolis & Omaha Railway Company on the arrival of its train No. 8 from the Twin Cities; that there was congregated at this depot a large crowd of strikers, which I estimate as being at least 20, walking along both sides of said train, watching everyone getting off the train, for the purpose of intimidating and stopping any person coming in on said train for the purpose of obtaining employment at the shops of said company.

W. Y. Burton.

Subscribed and sworn to before me this 2nd day of August, 1922. Lynn H. Ashley, Notary Public, County of St. Croix, Wisconsin. My commission expires January 13, 1924. (Notarial Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

RULE TO SHOW CAUSE—Filed Aug. 18, 1922

The President of the United States to Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson, and Walter Cronk, Greeting:

You are hereby cited and admonished to be and appear before our [fol. 52] District Court of the United States within and for the Western District of Wisconsin at the Courtroom in the Federal Building at Superior, Wisconsin, on the 25th day of August, 1922, at 10 o'clocck A. M., to show cause if any you know or have, why you, the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Mat. Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk should not be punished for contempt of court for disobeying and violating the temporary restraining order heretofore issued in this cause, and it is ordered that the Marshal of this district make legal services and due return of this rule on or before the apearance day above noted.

Witness the Honorable C. Z. Luse, Judge of said Court and the seal thereof this 18 day of August, 1922.

William H. Comerford, Clerk, by H. E. Ticknor, Deputy.
(Seal of Court.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION FOR CONTEMPT—Filed Aug. 18, 1922

Upon motion of the plaintiff it is ordered that a rule be issued on the defendants, Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Nat Anderson, John Hagen, Arley Martin, Clarence Michaelson, Joe Peterson and Walter Cronk to appear before this court at the court room in the Federal Building at Superior, Wisconsin, at 10 o'clock A. M. on the 25th day of August, 1922, to show cause why they should not be committed for contempt and violation of the temporary restraining order heretofore ordered and issued in this cause.

C. Z. Luse, Judge.

August 18th, 1922.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Sam Michealson, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 54] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Sam Michaelson; omitted in printing.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Dan Cullen, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 56] Order and that his denial is more fully set out in an affidavit which is hereto atached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing duly sworn to by Dan Cullen; omitted in printing.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Fred Henestra, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 58] Order and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Fred Henestra omitted in printing.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Ole North, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining [fol. 60] Order and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Ole North omitted in printing.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Art Daniels, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 62] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Art Daniels omitted in printing.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Joe Richie, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order and that his denial is more fully set out in an affidavit which [fol. 64] is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Joe Richie omitted in printing.

[File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Matt Anderson, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 66] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the Foregoing was duly sworn to by Matt Anderson omitted in printing.

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes John Hagen, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 68] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

John A. Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by John Hagen omitted in printing.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Arley Martin, in obedience to the Rule issued by this Court and says that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 70] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Arley Martin omitted in printing.

[File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO RULE TO SHOW CAUSE FOR CONTEMPT—Filed Aug. 25, 1922

To the Honorable United States District Court for the Western District of Wisconsin:

Now comes Clarence Michealson, in obedience to the Rule issued by this Court and say- that an attachment for contempt ought not to issue against him for disobedience of the Restraining Order and Injunction mentioned and referred to in the application and made a part hereof for the following reasons:

1. Respondent admits that on the 20th day of July, 1922 the said Chicago, St. Paul, Minneapolis & Omaha Railroad Company filed in this Court a Bill in Equity in which the said Railroad Company was plaintiff and R. A. Henning, et al. were defendants praying that an injunction issue against said defendants and that on or about the 20th day of July this Court entered a temporary Restraining Order which is still in full force and effect.

2. Respondent further admits that copies of the said Restraining Order were duly published and posted and were served upon them either by personal service or by publication in the Western District of Wisconsin by the Marshal or Deputy Marshal of this Court prior to the date of the acts alleged to have been committed in plaintiff's Application.

3. Respondent denies that since the issuance and service of the said Restraining Order aforesaid, that he has willfully, wrongfully, or deliberately disobeyed and violated the temporary Restraining Order [fol. 72] and that his denial is more fully set out in an affidavit which is hereto attached and marked Exhibit "A" and made a part hereof.

4. Respondent further denies each and every other allegation, matter and thing in the petitioner's Application alleged, whether upon information and belief or charged to be a fact.

Wherefore, Respondent prays the court that the said Application or Rule be dismissed and that he may be discharged.

Cadigan & Cadigan, Attorneys for Respondent.

Jurat showing the foregoing was duly sworn to by Clarance Michealson omitted in printing.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions—Filed Oct. 28, 1922

Before the Honorable C. Z. Luse, District Judge in and for the Western District of Wisconsin, Without a Jury, at Common Law

The plaintiffs in error, defendants below, were served with a rule to show cause why they, and each of them, should not be punished for contempt of court for alleged violations of a preliminary restraining order issuing out of the said court under date of July 20th, 1922, in a suit in equity commenced by the relator and described as Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. R. A. Henning et al., said injunction or temporary restraining order issuing from the said court on the 20th day of July, 1922, and said rule to show cause being made returnable on August 25, 1922, 1922. The plaintiffs in error, defendants below, made separate answer and return to the said rule to show cause on the 25th day of August, 1922, and an issue having been raised by their answer and return and separate answers and returns and pleas of not guilty, the case duly came on to be tried. The relator appeared by Messrs. Powell & Sprowls and W. T. Faricy, its attorneys, and the defendants appeared by Cadigan & Cadigan, their attorneys. [fol. 74] In the course of the trial the attorneys and counsel for the defendants did take and allege sundry exceptions to the rulings of the court, which said exceptions are hereinafter set forth herein. The trial of this case was begun August 25th, 1922, and the case was tried by the court without a jury, and the following proceedings were had therein, and the parties, to maintain the issue on their part, introduced oral and documentary testimony in evidence as follows:

The Court: Are the accused in court?

Mr. Cadigan: The accused are here, your Honor, represented by counsel, all twelve.

The Court: Messrs. Cadigan & Cadigan represent all twelve. The plaintiff seems to be fully represented. Are the defendants prepared to make returns to the order?

Mr. Cadigan: We are, your Honor. We have prepared separate answers for each of these defendants, and I would like to file them for the reason we have attached affidavits on behalf of each defendant that we will need to use; I will file them now but I would like to use them in examining the defendants in case they take the stand. They are verified answers.

Mr. Sprowls: Have you copies of these, Mr. Cadigan?

Mr. Cadigan: No, we have not copies of them. They are all the same. Here is one (handing same to Mr. Sprowls). They are all the same, Judge (handing paper to the court).

Mr. Sprowls: If the court please, the affidavits and answers seem to raise the issues of fact, and the plaintiff is ready to proceed.

Mr. Cadigan: Before proceeding the defendants and each of them at this time move the court for a jury trial, on the ground that the case is fairly covered by section 22 of the Clayton Act.

Arguments were made by counsel for the respective parties.

The Court: The motion is denied. Proceed with the hearing.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: Now at this time we would like to ask the court whether this is a trial for a civil or criminal contempt?

The Court: By what authority do you make such a request at this time?

Mr. Cadigan: I will withdraw it, and I move the court that, the defendants claiming this to be a case of criminal contempt, [fol. 75] ask that the case be prosecuted by the United States Attorney, and not by private counsel, and request it. I want an exception to the ruling of the court on that last motion.

Mr. Sprowls: I don't know as we have any objection to that. We have brought these matters to the attention of the court ourselves, and the plaintiff is not here claiming an exclusive right to prosecute these cases.

Mr. Farley: If the Court please, we are ready to prosecute the cases, ready to go ahead. We are likewise ready to let the United States District Attorney go ahead if he will prosecute them; but as the court knows the United States District Attorney has refused to prosecute. I do not understand that he has the exclusive right. I think his right to prosecute is concurrent with ours. Now, if this court can get the United States District Attorney to prosecute these cases we have no objection at all to turning over our proofs to him and having him prosecute them.

Mr. Cadigan: If the court please, the reason why I was anxious to determine whether or not in the opinion of the court this was a criminal contempt or civil contempt was just for the purpose of raising the question as to whether or not it was proper to have these men prosecuted for criminal contempt by private counsel. That was the only point in trying to ascertain that question.

The Court: Then your motion is that the court direct the United States Attorney to take charge of the prosecution?

Mr. Cadigan: That is it.

The Court: Based upon the claim that you make that it is a criminal contempt?

Mr. Cadigan: Yes.

The Court: Motion denied.

Mr. Cadigan: Exception.

To which ruling of the court the defendants then and there duly excepted.

The Court: I do not want to be understood as ruling finally, or ruling at all, that these prosecutions are not criminal contempt. I do not think that is essential to the determination of that motion.

Mr. Cadigan: Now, again before we proceed to trial the defendants seem to think that it will be necessary at this time to determine whether or not this is a civil or criminal contempt, under the provisions of section 22. Are we to understand now, Your Honor, that [fol. 76] the Court is not proceeding under section 22 of the Clayton Act, or is proceeding under section 22 of the Clayton Act?

The Court: Yes, we are proceeding under section 22.

Mr. Cadigan: Proceeding under section 22.

The Court: Well, now wait a minute. I spoke too hastily. Having determined that the acts charged here are not a violation of any state or federal statute, we are proceeding outside of the Clayton Act. That has no application, as I take it.

Mr. Sprowls: This was filed in our view as a proceeding in common law contempt, under the common law powers of the court.

The Court: I misspoke, and will change my answer there. Having determined that the facts charged do not constitute a violation of the state or federal statutes, the Clayton Act by its provisions does not apply.

Mr. Sprowls: Shall we proceed?

The Court: You may proceed. I do not know but what we are still possibly under some misunderstanding with regard to the application of the Clayton Act. The Clayton Act, some parts of it of course are general and apply to this class of cases.

Mr. Cadigan: Yes.

The Court: I understand your inquiry was directed——

Mr. Cadigan: To sections 21 and 22, directed to those two sections.

The Court: That is what my answer means, as to those two sections.

Mr. Cadigan: Yes.

Mr. Sprowls: The court is familiar with the complaint and affidavits attached, and I take it it is not necessary to read them at this time?

The Court: No, I think not.

Mr. Sprowls: The complainant offers in evidence the original restraining order issued in this cause by the court, together with the return of the marshal thereon.

Mr. Cadigan: I think we admit that in the answer.

Mr. Sprowls: You admit the service?

Mr. Cadigan: We admit the service.

Mr. Sprowls: Then if counsel consent, it will be admitted in the record that the defendants named are the members of the organizations referred to in the title of this case and the different unions therein named.

[fol. 77] The Court: And particularly those subdivisions of the general organization located at North Hudson.

Mr. Sprowls: Wisconsin, yes.

The Court: Is it so admitted, gentlemen?

Mr. Peter Cadigan: Yes, sir.

Mr. Sprowls: We offer in evidence the temporary restraining order and the return of service. Albert Larson, come forward and be sworn, please.

ALBERT LARSON, called as a witness on behalf of the relator, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is Albert Larson; I live in Hudson, Wisconsin, and have lived there for 48 years. I am general foreman at the Hudson car shops of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and have been in its employ for something over 30 years, and general foreman about one year; before that I was assistant general car foreman, and prior to that foreman of the passengar car repair shops; I also occupied position of inspecting new car equipment for the road at different factories. I know practically all the men who were in the employ of the Omaha road at Hudson, Wisconsin, and those that are now out on strike; I know Sam Michaelson, have since we were little boys together; I know Dan Cullen for several years, and Fred Henstra for five or six years, and Ole North for over thirty years, and Art Daniels for eight years, and Joe Richie for five years; Matt Anderson for fifteen years; John Hagen, ten years; Arley Martin, four years; Clarence Michaelson a number of years; Joe Peterson a couple of years; Walter Kronk several years, and I have seen these men almost daily during all that time. There was a strike existing at Hudson on August 1st, 1922, the strike begun July 5th. During my work as general car foreman I made daily reports to my superior officers as to conditions existing in connection with the strike; it was part of my duty from the beginning of the strike up to August 1st to observe the actions of the men who were out on strike and make reports in reference to that fact. I recall leaving the shops about four thirty on the afternoon of August 1st, 1922; I went out to the big gate, the entrance there, and when the [fol. 78] men went home there was quite a number of men, women and children there hooting and hollering, and Clarence Michaelson was standing there and he was hollering "scab" and "low down scab." There were about forty people there, and the largest crowd was about forty or fifty feet from the gate, and some were six or seven feet away from the gate; I don't know who was the picket; there were three or four other men standing with Michaelson, or a short distance away from him; there was quite a space between this group of men where Michaelson was and the largest group, about forty feet.

On August 2nd, about nine forty, A. M. I saw a bunch of forty or fifty men down at the track entrance, which entrance is located south of the shops and is one of the points of ingress and egress from and to the shops; these men were former employes of the company and were on strike. Among them were Sam Michaelson, Fred Henstra, John Hagen, Clarence Michaelson, Ole North, Joe Richie, Art Daniels and Arley Martin, Dan Cullen. I made a report at the time and had their names typewritten when the matter was still fresh in my mind. Some of these men were on the roadway and some were on the railroad tracks and they were scattered some. There is no gate at this point, it is just an opening where the railroad tracks come into the shop yards, but there is a fence there that comes up pretty close to the tracks and that leaves an opening of about a

hundred and fifty feet. The nearest of this group were right at the track, right at the closing, there is a crossing there. The switch track coming out of the shop yards leads to the depot, and it is over this track that men coming in would be brought into the shop yards, and several of the men at present working come to work that way; all those that come from the direction of the depot use that place to go into the yard.

Cross-examination by Mr. Peter Cadigan:

There were quite a number of men on the crossing, right at the entrance to the shop yards; this crossing is on one of the streets of North Hudson and intersects the street, and in going from one portion of the town of North Hudson to the shops it is necessary to walk over that crossing; from the direction of Sam Michaelson's home going to the shops he would not cross that crossing. On August 1st at four thirty, P. M. I did not go out of the gate at that time but [fol. 79] stayed there, that is the main gate, until about five thirty. There was no crowd at the gate at five thirty, but at four thirty I saw a crowd of men, women and children about forty feet away from the main entrance. Among them Clarence Michaelson; he was about six feet away from the gate and wasn't with the crowd that was back forty feet. I did not recall any other of the defendants as having been with them; there were three or four other fellows with Michaelson close to the gate but I don't know who they were, I didn't pay any attention to them at all; they were not in conversation with Michaelson and I couldn't see whether they were with Michaelson or not; they were some of them shop men but I can't say who they were; the nearest man to Michaelson in the same group was two or three feet away from him; they were standing up; the other men were three to five or six feet away and Michaelson said nothing to me, or to any of the other men. The majority of the crowd that was standing far back was composed mostly of women and children; there was quite a number of men there too; all of them were hollering.

Some of the employes left at four thirty, but I did not leave until five thirty; I was at the gate when some men came out of the shop and stayed there during the time they passed out, and I heard Clarence Michaelson say something but didn't hear the other fellows say anything. Michaelson hollered at them and called them "scabs," "dirty low lived scabs" as they passed out. There were two or three automobile loads of men that passed out; about five in the first automobile; four in the second and I can't say how many in the third, probably three or four. I was watching Michaelson, the other men did not say anything. I can't remember whether any of the other defendants were there at that time.

On August 2nd at nine thirty, A. M. I was going down the railroad track from the shops, southwest, alongside the rails on a kind of path that had been used by the men for years; this is a trail three or four feet from the tracks, and just wide enough for one man to walk on. When I went down there there weren't very many

strikers there and I came within a block of the crossing; I had walked two or three hundred feet; I was going down after Mr. Thorne and he was going down to the depot; Mr. Thorne is the master carpenter. The depot is about half a mile from the shop. The men congregated when I came back; I saw Ole North and Matt Anderson when I [fol. 80] was going down but had no conversation with them. There were three of them together but I don't remember the third one; they were on the railroad crossing where the crossing crosses one of the streets of North Hudson; the crossing is about two blocks from the shops. Ole North or Matt Anderson said nothing to me or Mr. Thorne and did not try to intimidate either of us; they appeared to be minding their own business. Ole North and Matt Anderson were standing right on the railroad track where it crosses the street. I went on toward the depot with Mr. Thorne; I went down as far as one end of a railroad bridge that crosses over the river; I stopped down there and talked to Mr. Thorne and Mr. Thorne went to the depot and I came back up again; it was about a block and a half from the crossing to the bridge or about three blocks from the shop. Upon walking back toward the shop alone I saw a congregation of men, and they were all along the street right at the crossing. This street is not very much traveled but there are residences near the crossing; I don't know whether the defendants lived near there or not; this street leads down to a bathing beach used by the people in North Hudson. I came back alone and passed through the men and they said nothing to me; I was not intimidated; they did not ask me to stop working for the Omaha and they were about three hundred fifty feet away from the shop. Among these men I saw Sam Michaelson, the President of the village, and Joe Richie.

I knew that some of these men were specially appointed police officers of the village of North Hudson and have been informed that four of the men at the crossing were acting in their capacity as officers of the village of North Hudson; I don't know what their names were and I did not know that Matt Anderson was a policeman but I had seen Joe Peterson with a star on sometimes and knew that Arlev Martin was an officer. They were appointed since the strike and were former employes of the Omaha in the shop. I never saw any of these men talking to any of our present employes in the shops; I just came along there and I saw these men there and I made a report about it and that was all there was about it. The men working in the shops could not see these men there at the crossing because the shops are three hundred and fifty feet away and surrounded by a fence. I can't tell one specific instance when I saw any of these defendants talking to any of our employes or using threatening [fol. 81] language to them or trying to intimidate any employe in any way.

Redirect examination by Mr. Sprowls:

The men left their work in the shops about four thirty in the afternoon and that fact was generally known among the employes of the railroad company. I do not know if any of the officers that

I speak of who were officers of the village were officers before the strike began and believe that they were all appointed since then. I do not know what their functions were as officers of the village and I haven't seen them do anything. The path which I have mentioned is used by employes of the company in going in and out and is a well recognized and beaten path along the track.

Q. Now, on cross examination you stated that Mr. Thorn had that day gone down to the depot. Do you know why he was down

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer yes or no.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls: Do you know the occasion of his going down there at that time?

A. Yes sir.

Q. What was the occasion of his going down there?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls:

Q. State what the purpose of his going down there was.

A. He expected some men to come in.

Q. They were to come to the depot at Hudson, were they?

A. No, he expected some men to come in down at the depot from one of the trains.

Q. And if they had come in at that time they would have been brought in over this track, would they?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial.

A. Yes.

[fol. 82] The Court: The answer may stand.

To which ruling of the court the defendants then and there duly excepted.

This assemblage I have described was right a few feet away from the shops; there is a fence on each side of the opening, but they were directly next to the property of the Omaha railroad. The street crossing where the railroad crosses the street is a street that runs right along next to the fence of the Omaha property. Part of the track that crosses the street is inside of the shop grounds and part of it is outside and the men were assembled on the track and the street at the point where it immediately enters on the property of

the Omaha Railway Company. I am not a member of any of the Unions or organizations on a strike, and the strikers have never questioned my right to remain at work during the strike, because I was not called out by any organization to which I belong, and I have not been molested in going back and forth and in and out of the shop and the office.

Q. Do you know whether other men have been stopped in going in and out of those yards?

Mr. Peter Cadigan: Objected to as incompetent, irrelevant and immaterial. It should be limited to a certain time, and the dates charged in the information.

The Court: Overruled.

To which ruling of the court the defendants then and there duly excepted.

Mr. Sprowls: Do you understand the question?

A. Yes sir.

Q. Answer it, please.

A. I cannot recollect any names.

But I know that men have been stopped by assemblages just as the one described. On the morning of August 2nd when I was leaving the yards by way of the railroad track or that path I saw other men approaching that point the time I was going out, I should say probably fifteen or twenty coming in from all directions; they were coming toward the point where the tracks went into the shop yards; they were former shop men out on strike, and when I came back this crowd was there.

Recross-examination by Mr. Peter Cadigan:

Some men have been brought to work at the shops since the strike, [fol. 83] and on last Saturday night some were brought in cars over this track into the shops, but none previous to August 2nd. Ordinarily they were brought in via a bus line; some of the new employes were brought to the shops in cars previous to August 2nd but I don't know just what time, maybe a week before that, but they weren't brought in over any track and not on railroad cars. Previous to August 2nd I had no information that men were to be brought to the shops at North Hudson on that day, but on August 2nd, at nine thirty in the morning, I heard there was someone that was to come; this was just previous to the time I started after Mr. Thorn. The manner of bringing in these men is kept secret and I do not know whether any of the defendants had any information to the effect that men were to be brought in on that morning. There are about seven tracks running into the yard where the shops are located; switches start in a little below the crossing and then there are some switches above the crossing; this is the only track that leads directly into the shop; there is switches on both sides of the crossing but none in the street, and there are switches inside the yard, close to the shop. I heard that Sam Michaelson was President of the

village before the strike took place. When I was following Mr. Thorn down to the depot, among the men I saw coming toward the railroad crossing was Arley Martin; he was about two blocks away when I met him; Ole North and Sam Michaelson were on the crossing; I also met John Hagen coming up the railroad track about one hundred and fifty feet away from the crossing; he was going in the direction of the crossing. That is about all I can remember. Hagen was on the path alongside of the track. He did not accost me or say anything to me. This path has been used by railroad employes for a number of years.

Re-redirect examination by Mr. Sprowls:

When I started down there after Mr. Thorn I understood he was going to meet some men who were coming in to go to work. We had employed only ten or twelve new men in the shops up to the time this instance occurred; ten or twelve was all of the men that were employed at that time to take the place of the men who were on strike; there were about three hundred men on strike and we had ten or eleven at that time to take the place of three hundred.

[fol. 84] Re-recross-examination by Mr. Peter Cadigan:

Mr. Thorn told me that new men were coming in to take the strikers' places on August 2nd; I learned this about ten minutes from the time that he started up to the depot.

WILLIAM Y. BURTON, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is William Y. Burton; I live at Hudson, Wisconsin and I have lived there about forty-five years; I am employed by the Chicago, St. Paul, Minneapolis & Omaha Railway Company and have been in their employ a little over thirty-two years. I have been apprentice in the machine shop at St. Paul, switchman, painter, wood machinist and foreman; at the present time I am foreman of the mill. I was absent from 1916 to 1918, being in the National Guards, with which I was connected for about twenty-eight years; I have been a national guard from private to Lieutenant Colonel. I was a Major in 1916 and commissioned Lieutenant Colonel in June, 1917. In 1916 I was in San Antonio and was at Waco, Texas, in 1917 and 1918; I was also on the Mexican Border in a training camp. I am acquainted with the former employes of the company and worked at North Hudson, that is, a good many of them; the biggest part of them, but I don't know them all by name. I have known Joe Peterson for a couple of years; he worked for me for about six months; I know Clarence Michaelson; have known him quite a number of years; I have known Walter Cronk quite a number of

years. There is a strike on at the present time on the part of certain employes of the Omaha at Hudson, which has been effective since about the 1st of July; about three hundred of our employes went out on strike; among them Joe Peterson and Walter Cronk.

I generally quit work at the shops at North Hudson about four thirty in the evening, and quite a few other employes of the company quit work at the same time. I recall leaving the shop grounds on the 1st day of August, 1922, about four thirty in an automobile; I left by what is known as the main entrance that goes out on Fifth or Sixth Street, and at the entrance I recall seeing two persons; as [fol. 85] I was going out the gate in my automobile, there were three other foreman with me; just as I was going out the gate at a very slow rate of speed, about six or eight miles an hour, I heard someone yell, and I turned quick to my right; Clarence Michaelson was standing just outside the gate, not over a foot away from the running board of my automobile, and Joe Peterson was standing within two or three feet from him, both of them standing up facing us; I looked around and I say Clarence Michaelson throw out his fist and say, "You God damn dirty scab;" he shook his fist at me and at the same instant Joe Peterson said, "You dirty low lived scab;" Peterson had a star on; they were standing on the right hand side of the car going out of the gate. The strikers maintained a picket there at that time and I noticed a man on the left hand side of the gate, where ordinarily the picket is always located; they had one picket there right along and he usually occupied the position described. Michaelson and Peterson were both on the right hand side of the gate and in back of them I noticed some men; I did not notice who they were and can't say how many, possibly two or three; they were six or seven feet away from Peterson, and diagonally across from the gate, about fifty or seventy-five feet from the entrance, there was a large congregation of men women and children, I should estimate forty or fifty, and they hooted and hollered and yelled, but I paid no attention to them; I either had to turn to the left and go east and pass them or go straight out; I went straight out down Main Street, but if I turned to the left I would have to pass between them and the grounds of the shop; they stood diagonally on a corner on a private lot, just off the side walk, so instead of going the way I usually went and taking the street to the left in order to prevent passing them, I went on straight ahead one block south and then turned east. This all occurred on August 1st in the afternoon. At the time I left the shop yards I saw Mr. Albert Larson inside the fence at the entrance, right at the gate.

Q. Did you see in going in and out on a number of other occasions following that time this same assemblange near the gate of the yards?

A. Yes sir.

Mr. Peter Cadigan: Just a moment please. I should like to hear that question.

(Question read.)

Objected to as incompetent, irrelevant and immaterial.

[fol. 86] Mr. Sprowls: It seems to me it is material on the general question of intent.

The Court: What bearing has the intent of those that may have been across the street, a large assembly?

Mr. Faricy: I think the question probably should be limited to these particular defendants, your Honor, but if counsel wants to show or seeks to show that at other times and at this same place these defendants committed some acts, it seems to me that goes to the question of their intent in being there. Were they there but once the argument might be made that they were there rightfully, but if we show they were there a number of times this same way I think it goes to their intent.

The Court: The question is rather unfortunate on that theory.

(Question read.)

Mr. Sprowls: I will withdraw that.

At other times after the service of the restraining order, I saw Mr. Peterson in the vicinity of the entrance; I have seen him there almost every morning and night; he had a star on walking around and hollered "scab" at me on several different occasions.

Cross-examination by Mr. Peter Cadigan:

Previous to August 2nd, Peterson hollered "scab" at me on various occasions; he hollered "you scab," that is all; I can't give the dates; he did it after August 2nd but I can't give the dates; he did it on a good many occasions; on one particular occasion as we were going past his house, he stuck his head out of the window and roared "scab, scab" at us; there were three foreman with me; Andrew Johnson, Edwin Lomnes and Hans Lystad. The mill where I work manufactures all the wood work for the building of cars, and is in the same enclosure as the shops. On August 2nd at about four thirty o'clock, I was leaving the shops by the large gate—the main entrance—I don't know the name of the street that it opens into, but there are residences on the street; the gate is ten or twelve feet wide when it is open, and there is just a railing across the top of the gate, the railing being about twelve or fourteen feet high, and there are no railroad tracks going through that entrance; automobiles go in through this entrance gate and it is the main thoroughfare on the company's property. At four thirty on August 1st I [fol. 87] left the entrance in an automobile with Andrew Johnson, Edwin Lomnes and Hans Lystad, and in going out the first man I saw was the picket on the left of the entrance; I don't recall who he was; he said nothing and there was no one near him; but I heard somebody yelling and I turned quick to the right and I saw Clarence Michaelson going through the performance I mentioned; I heard him say, "You God damn dirty scab" once, that is all; he was shaking his fist; I should judge Clarence Michaelson is still a

minor; he wasn't over two or three feet away from Joe Peterson, and Joe Peterson yelled about the same time; I don't know who the two or three other men that were there, but they were standing six or seven feet away; I can't say whether they were with Peterson or not; I don't know whether Peterson was an officer or not, although I saw him with a star; I presume that he was; I have been informed that he was an officer; I saw Peterson there after August 2nd on another morning and he was with Joe Richie; [illegible] and Joe Richie were across the street with another man named Spielman, but they said nothing at that time; I saw Peterson nearly every morning and night as I went out; each night there has been a big crowd at the entrance, from forty to fifty, and Peterson was generally with this crowd; I don't know whether Peterson was there as an officer to quell any disturbance or not; the crowd was not on railroad property and did not have the road blocked or the passageway into the yards and I could have driven my automobile by the place where they were; the majority of the crowd consisted of women and children, and they were the ones that were doing most of the yelling.

Redirect examination by Mr. Sprowls:

Every night until the last few days there was a crowd of forty to fifty gathered there near the entrance and Peterson was there almost every time. On the afternoon of August 1st I recollect passing the Northwestern school house which is now being used as strike headquarters; I saw some men lying in the yard there as I passed and turned to go east; just as I turned my car east around a corner there were four or five men lying in the school yard and as I passed them Walter Cronk rose up and said "You are a fine bunch of looking scabs" but I kept on going. Cronk is a former employe now on strike.

[fol. 88] Recross-examination by Mr. Peter Cadigan:

The schoolhouse is one block south of the main entrance. Cronk was the only one that said anything and I do not know the names of the others as I paid no attention to them.

WILL TOUTON, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

My name is William Touton; my occupation is United States Deputy Marshal and I reside at Madison; I have been a Marshal for six years and recall being sent to Hudson in August, 1922. I left Madison on August 3rd and arrived in Hudson on August 4th, being ordered there by the United States Marshal for investigation and guard duty; I stayed in Hudson till the evening of the 10th of August, I came to know some of the men who were former em-

ployes of the Omaha at Hudson and who were on strike; I recognize in the Court Room some of the men whom I had seen around the entrance to the shop yards at the time when I was in Hudson; among them Arley Martin and Joe Peterson, and I see a lot of other faces here that I have seen but I don't know their names; also Joe Richie. At the times that I saw these three men there were a number of men gathered there at the fence; they would generally gather right after the whistle blew at four thirty; these three men were all there on the night of August 4th when there were at least seventy-five men assembled.

Q. State if you know whether that was the hour on which the employes that were working in the shop quit their work?

A. I know when they assembled; I know the occasion they assembled for.

Mr. Sprowls: I did not mean to call for that answer.

Mr. Peter Cadigan: I move the answer be stricken out as not responsive.

The Court: Stricken out. Read the question.

(Question read.)

The men assembled at four thirty which was the hour that the employes that were working in the shop quit work.

[fol. 89] Cross-examination by Mr. Peter Cadigan:

On the occasion mentioned, on August 4th, there were no women or children among the seventy-five men. I have been informed that Martin and Peterson were police officers and knew that they were. This crowd was about seventy-five feet away from the entrance and across the street on the corner; they remained there until the employes left the shop and for some time after; I don't know whether any of the other defendants were in the crowd or not; Martin and Peterson both wore stars and there were other police officers there besides them; there were at least ten police officers in that crowd; Mr. Richie, a brother of the defendant, Joe Richie, is the village marshal and he was there also; Joe Richie was just in the crowd; the Sheriff of the county was with me that evening; there were no representatives of the United States Marshal's office at Hudson when I left.

Redirect examination by Mr. Sprowls:

These local officers did not lend me any assistance in preserving order at the time mentioned; at this present time I believe there are four United States Deputy Marshals at Hudson, but I am not positive; on the occasion of the assembly on the afternoon of August 4th nothing of any violence occurred; the crowd just stood there for about half an hour, that is, from four thirty until five o'clock; some employes went by at that time but no one in the crowd said anything and they did nothing; they were a very quiet crowd.

Recross-examination by Mr. Peter Cadigan:

I did not need any assistance from the local police officers and I did not request any.

Re-redirect examination by Mr. Sprowls:

At the time I was there on August 4th I told a number of men that I was United States Deputy Marshal and told them why I was there and what I intended to do, and quite a number of men in the crowd knew that.

[fol. 90] Re-recross-examination by Mr. Peter Cadigan:

There was nothing abusive said to me by any of the men on August 4.

Re-redirect examination by Mr. Sprowls:

Some one asked me what my credentials were but that was a different occasion; that was on about August 7th; a man named Monroe who was an officer and wore a star inquired of me. The village marshal told me that there were twenty-three officers besides himself, making twenty-four in all. The population of North Hudson is about seven hundred.

WILLIAM H. THORN, called as a witness on behalf of the plaintiff, was duly sworn, and testified as follows:

Direct examination by Mr. Sprowls:

I reside in Hudson and have lived there since 1915; I am master car builder for the Omaha Railway and I am the chief official in charge of the shops at Hudson. Albert Larson is my general foreman. North Hudson has a population of between seven and eight hundred inhabitants and has no industry outside of the railroad shops. Prior to the strike we had three hundred and twenty-eight employes, two hundred and twenty-five of which belonged to the six associations of shop crafts on strike, and all but eleven of these two hundred and twenty-five went out on strike; during the time I have been in charge I have become acquainted with a great many of the men now on strike; I know practically every man there by sight, but I could not call them all by name; I have known Sam Michaelson for thirty years; Dan Cullen for nine years; Fred Henstra for four or five years; Ole North for thirty years; Art Daniels for eight years; Matt Anderson for nine years; Arley Martin for four or five years; these men were all in the employ of the company until about the 1st of July 1922, and they are now out on strike. I left the shop grounds on the morning of August 2nd, 1922, having received a telephone message that some men got off the train that looked like workmen and had started toward the shop, and I went

down to see them to see if I could get them through the picket line in case they were shop men. Just prior to this time the picket line [fol. 91] had varied from three or four to forty or fifty at different times of the day; I went down the path along the track, it being a short direct road to the depot; the bulk of the men employed in the shop go out by what is called the main gate, but some use the road that I used and nearly all of us use it occasionally; it is between one half and three fourths of a mile from the railroad station at Hudson to the entrance to the shop grounds along this well beaten path; at this track entrance to the shop grounds where I went out there that morning, I saw Sam Michaelson and Ole North and other men approaching, and down the track leading toward the depot I saw Matt Anderson, Dan Cullen, Art Daniels and Fred Henstra; they were there at the crossing or approaching it at that time; they were coming from two directions, one from the main part of the village and two, I think, were coming from toward the depot; my recollection is there were three men standing on the tracks at the entrance and that the others were approaching; I met Arley Martin after I had passed the crossing and was going through the yard and he was going toward the crossing; I did not find the men that I was looking for at the depot and brought none back to the shops that morning; up to that time we had brought in very few to take the places of the men who were on strike. The shop grounds proper contains about forty acres, and it is enclosed, part of it with a high board fence and part of it with an ordinary wire fence; there are certain well defined points for going in and coming out of the enclosure, and the point where the railroad tracks lead into the property is one of them; the main entrance that is used by most of the employees is north and east of the track entrance; this one is used by automobiles and foot passengers.

I have been down at the entrance gate numerous times since the restraining order was served; the order was served on either the 21st of July or the 20th of July; I remember the United States Deputy Marshal serving the defendants and posting the copies. Since that time I have seen some of these defendants near the entrance to the shop grounds and in company with others; some times the crowd would vary from ten to fifty, and it was usually greatest between seven and seven thirty in the morning and four thirty in the afternoon, the hours when our present employes go to work and when they quit.

[fol. 92] Cross-examination by Mr. Peter Cadigan:

I am unable to state how many of the present employes have used the track entrance for obtaining ingress to and egress from the property; there was one that used it for a time; all employes have been going in through the main entrance, some by automobile and some on foot, and they do not use the track entrance, and before the strike order was served the entrance ordinarily used was the main gate, but there is quite a number that live in the lower part of the town that have always used the other entrance; the track entrance is from a hundred to a hundred and fifty feet wide and

has no gate, fence or obstruction of any kind; the shops themselves are between four and five hundred feet from the public street and that passes by there, and the fence surrounding the property is right on the edge of the street, and it was at this crossing that I saw Michaelson and Ole North standing on the morning of August 2nd at the intersection of the railroad crossing and the public street; Mr. Same Michaelson is president of the village; I also saw Anderson, Cullen, Daniels and Henstra, some coming up the track and some coming up the street; they were approaching in a scattered group and were not all together; Anderson and Martin were coming up the yard and the other two were coming up the street; there were others also that I do not recall. I had no information that morning that new employes were coming into Hudson that day, although I was expecting new men every day. Around about August the 2nd or 3rd there was very little importation of men to take the strikers' places, but I can't place any date in the neighborhood of August the 1st or 2nd when we were importing men to take the place of strikers, although we have had some brought in both before and after the dates mentioned; since the restraining orders were served about seventy-five or eighty men have taken the place of strikers and they gain access to the property in different ways; the new employes were not brought in through the track entrance but went through the regular gate entrance; we have not taken any men in through the track entrance. North Hudson is a separate municipality inhabited by employes of the Omaha Railroad who live there and reside there; nearly all of the residents of North Hudson are shop employes, and the only business establishments there of any size outside of the Omaha shops are two groceries, a meat market and a confectionery; the great portion of the male popu-[fol 93] lation is employed by the Omaha Railroad. On or about August 1st and 2nd nearly all of the then employes of the railroad company, perhaps a hundred, were using what is known as the main entrance; that is the gate entrance, out of which only eighteen or twenty were involved in the strike trouble.

Redirect examination by Mr. Sprowls:

We do not have a full quota of employes at the shops at Hudson at this time; Andrew Johnson, Edwin Lomnes and Hans Lystad, to whom Mr. Burton referred, are three supervisory officers at the shop; it would put us to a great inconvenience to spare these three men from the shops at the same time that Mr. Burton and I are away; we would have difficulty in operating the shop during their absence.

Recross-examination by Mr. Peter Cadigan:

Andrew Johnson, Edwin Lomnes and Hans Lystad supervise at present fifty or sixty men; they are foreman carpenters; ordinarily they supervise a hundred or hundred and twenty men; they are in charge of men who are now working; of men who took the place of those who are out on strike.

Whereupon the plaintiff rested its case.

Mr. Cadigan: At this time we would like to move that all testimony of the witnesses for the relator here in reference to statements made by them that certain of the relator's witnesses were scabs, be stricken out as irrelevant, for the reason that under our interpretation of the preliminary restraining order that particular act is not restrained.

The Court: Well, assuming for the purpose of the motion that is true, it would seem to me that the evidence might remain, particularly that part of it which relates to what was said near the main gate on the afternoon of August 1st. Probably the evidence in that regard with reference to what the defendant Cronk said at some time August 2nd or later, at any rate at the school building, perhaps is not material, but the motion will be denied.

Mr. Cadigan: Exception.

To which ruling of the court the defendants then and there duly excepted.

[fol. 94] Mr. Cadigan: I move at this time that the defendant Walter Cronk be discharged, for the reason that the only evidence of any act performed by him at all is the statement made by him in the school yard a block or so away from the premises of the company, making the statement to the witness Burton that he and the men with him were a fine looking bunch of scabs. I do not believe the provisions of the temporary restraining order restrain that. It is true the injunction does, but the preliminary restraining order I do not think does.

Mr. Sprowls: It does not in words; we concede that.

(Argument not transcribed.)

The Court: I think it cannot be said as a matter of fact that one who uses that word towards employees is not attempting to intimidate. Of course, I do not suppose the intimidation or attempt would amount to much, or not amount to much in this case, but that can be taken care of in another way, and the motion will be denied. You may note your exception, Mr. Cadigan, and proceed.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: I make another motion at this time, that the defendant Cullen be discharged for the reason that there is not any evidence showing that he is attempting to violate this injunction in any way. The only evidence, as I understand it, and my recollection is—if I am not right the court will correct me—but my recollection is that Mr. Cullen was on the street, coming down a public street there where one or two men had congregated some distance away.

The Court: That is true according to Mr. Thorn's testimony, but he is placed there in the group by Mr. Larson's testimony.

Mr. Sprowls: I think that is correct.

The Court: He named him as being there in the group. I would suggest that you make further inquiry before the close of the matter as to that. The motion will be denied. You may renew it.

To which ruling of the court the defendants then and there duly excepted.

Mr. Cadigan: For the sake of making up a record, I move a dismissal of the case against all these defendants on the ground previously stated, that the court is without jurisdiction to try the direct issue in this case for the reason that each of the defendants have requested a jury trial.
[fol. 95] The Court: Denied.

To which ruling of the court the defendants then and there duly excepted.

Whereupon the defendants introduced the following evidence:

Joe Ritchie, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Joe Ritchie; I live in Hudson and have lived there for ten years; I was employed as a car repairer for the Omaha Railroad at North Hudson previous to the calling of this strike; I am married and have six children; I am twenty nine years of age; my oldest child is seven and the youngest is one year old. I know Mr. Albert Larson and heard his testimony on the stand in this case; I heard him state that at about nine thirty on the 2nd day of August that he saw me, congregated with other men, at the crossing of the railroad track where it intersected Wisconsin Street; I wasn't there, for I left Hudson at seven forty-five that morning for St. Paul; I arrived in St. Paul about nine fifteen, A. M. and went to Mr. Henning's office and from there up to Lawyer Sullivan's office; I was at Lawyer Sullivan's office about nine forty-two. Carl Simonson, George Starr and Eugene Richie were with me; Eugene is my brother and was village marshal at the time and was out on strike; George Starr and Carl Simonson were also out on strike. Mr. Sullivan is an attorney and has an office on Third Street in St. Paul, but I don't know the name of the building he is in; I drove those boys up there and I went with them. We stayed in his office until one thirty in the afternoon and started for North Hudson about six thirty that evening, and I was not in North Hudson that day between seven forty-five A. M. and six thirty P. M.

Cross-examination by Mr. Sprowls:

I fix the date as being August 2nd because I was up to Lawyer Sullivan's office, although I don't remember the exact date I went. [fol. 96] I kept no memorandum of it, and know it was the date because we got a letter from him; I am sure it was the second of August; on the 1st of August I was home helping my brother build a house, and I was working on the house about every day before

August 2nd. I was away from Hudson other days since the 1st of July; I was away for about two weeks in July, from about the 6th of July until the 15th of July; I can not tell what I did the 9th day of July, nor the 10th, nor the 14th; I didn't keep track and don't remember, but I paid attention to August 2nd because I wasn't in Hudson that day. On the 6th day of July I was cone and I went back to Hudson at night and went out again the next morning and during the two weeks mentioned in July I was at Hudson every ni-te; during one of the weeks mentioned I was in Hudson every ni-te, but I was away for a whole week one time. I don't know where I was on the 10th of July; I didn't pay any attention to or keep track of it. There were three other men with me on that trip to St. Paul. We did not see Mr. Henning because he was in Chicago, but I saw two of his assistants, although I don't remember their names. I believe he would remember that I was in St. Paul at his office on the 2nd day of August. We saw and talked with Mr. Sullivan at Sullivan's office on the 2nd of August; Mr. Sullivan is the attorney representing the Unions in St. Paul. There was a memorandum or note made of it because I reported in strike headquarters in Hudson that I was going that day and they have it down; Mr. Sullivan also put it down on his book. The day I left for St. Paul I went to the office of the Union in North Hudson and reported there that I was going to St. Paul that day; Rudolph Birkmost was the Union officer in charge; he is Chairman of the local and I made a report to him, although I have not examined any record in the Union office.

Redirect examination by Mr. Peter Cadigan:

I know what this is (referring to written affidavit handed by counsel to witness); I got it from Mr. Sullivan the day I was at his office, but it does not refresh my memory as I can't read. I was in St. Paul on August 2nd at Mr. Sullivan's office.

Recross-examination by Mr. Sprowls:

I can't read that paper (referring to the affidavit), but I know what is in it because it was read to me by Art Daniels.

[fol. 97] Re-redirect examination by Mr. Cadigan:

I was away from Hudson about two weeks after July 6th, leaving Hudson on the 7th of July. I went to Cumberland to visit my father-in-law; my wife was with me and we stayed there three or four days. We got to Cumberland the same day that we left Hudson and were in Cumberland on the 8th and 9th, although I don't remember as to the 10th, but I was there three or four days; I can't remember when I came back to Hudson; I never paid any particular attention to the dates and I never saw the record made at the Union headquarters when I went to St. Paul. I was in St. Paul on the 1st because I was home working on my brother's house; I was not in St. Paul on the 3rd but I was there on August 2nd as they wanted me to drive to St. Paul. Carl Simonson, George Starr and Eugene

Richie had some business to do and they wanted me to drive to St. Paul with them. I don't remember how many times I have been at St. Paul since the 1st of July but I have been there a good many times; maybe six times since the strike started; I drive over there in my car.

Re-recross-examination by Mr. Sprowls:

I can't remember whether I was there on the 15th of July or not, or on the 20th of July, but out of the six times that I have been there since the 1st of July, the only date that I recall absolutely is the 2nd day of August.

SAM MICHAELSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Sam Michaelson and I am a defendant in this case. I am fifty-one years of age and live in North Hudson, Wisconsin, and have lived there seven years steady but have lived within four miles of Hudson for thirty-six years. I am a married man of family and am the father of the defendant Clarence Michaelson. I am a striker and was in the employ of the Omaha previous to the strike; I am a member of the machinist's organization and I am president of the village council, being elected last spring, this being my second term; [fol. 98] I qualified for office. We have a town marshal at North Hudson elected by the people; he is also a constable. Since the 1st day of July I have appointed twenty-four special police officers; they were appointed all at the same time subject to call. The population of North Hudson is about six hundred and out of that six hundred, seventy-five or a hundred are strikers, although I have never counted the exact number. As President of the village of North Hudson I look after the policing of the village, and during the day time on an average there are six or seven officers on duty that wear stars. At first I never assigned any of them to any certain place and the last time I tried to assign them was to call them so as to keep them on a certain beat and keep things in order. I don't think there have been more than eight or ten that I know of on duty at any one time. Three of the six here were officers appointed by me, namely, Joe Peterson, Arley Martin and Matt Anderson. At one time Arley Martin was a deputy sheriff after the strike order went into effect, but he was deputy only for about a week. As President of the village I have occasion to be on the streets in the day time or around the property of the company; I generally make it my practice to go around the whole village; I have done this nearly every day; I go around and see that everything is peaceful. I have delegated and instructed Martin, Peterson and Anderson to act as policemen in the village of North Hudson; I had them sworn in the 1st day of August or the last day of July. I have never caught any number of strikers assembled around any of the various points of entrance to the Omaha

property. Somewhere around about the 1st of July or the 1st part of August I met the master car builder (Mr. Thorn) with the sheriff and a deputy. On August 2nd I remember walking across the track at the railroad entrance on the crossing and I came back that way; this was on Wisconsin Street, a public street which has been in existence for fifty or sixty years; it joins First Street that goes up to the ferry landing or the swimming beach; this is the street that is close by the tracks of the Omaha railroad leading into the shop grounds. There is sometimes a good deal of traffic on the street, other times none; there was once upon a time that seventy-five or a hundred automobiles went back and forth there in a day. The swimming beach is down one end of this street, and some of the people go off down through the railroad property to the swimming beach; the most popular point of the beach is about two or three blocks from this [fol. 99] railroad crossing; this street is traversed by people going to and from the beach during the day. People from Hudson drive down the street because there is a regular part next to it and strikers go up and down that street to the swimming beach.

As President of the village I have no recollection, and no case has come under my observation where there was a large assemblage of strikers, forty or fifty, or sympathizers, in close proximity to the company's property at the intersection of the railroad tracks in Wisconsin Street down to and including August the 2nd, 1922. I had heard that a crowd assembled there once but I can't remember the date; I think it was Saturday, August 19th, but I was not there; I know nothing about it. I know the location of the gate at the main entrance, but no case has come to my attention of any number of strikers being at the gate, but I know there were some on the lot across the street, but I never was with them, so I haven't seen them. I made the officers take the oath of office and they promised they would do just the same for one side as the other, the public and take care of the people of North Hudson; they subscribed to a constitutional oath to do that which was administered by a justice of the peace.

Cross-examination by Mr. Sprowls:

Normally we have one constable and one village marshal in the village but I appointed twenty-four special officers; I thought we needed them because the master car builder (Mr. Thorn) who made the complaint that there was an assembly one night and the sheriff and deputy sheriff or three deputies, I think it was, came up there and stayed at the gate or that street that they call Monroe Street. This is a street that runs east and west connecting with that gate on Fourth Street, and they were there and I wanted to try and keep the peace and order in that little village so there wouldn't be any expense or burden to the village or they wouldn't have any cause for keeping the sheriff or deputy sheriff there. These officers volunteered to serve the village without pay; I gave them each a star, but I told them not to wear it only when they were called for certain duties.

I heard no complaint about them. Normally, practically all the people live in North Hudson have the heads of their families employed in the Omaha shop, and there were very few that were not supported by their husbands or fathers employed in the shops, so [fol. 100] that the only protection we really needed was against the inhabitants of North Hudson. Joe Peterson was one of the special police and I am sure that he never made threats or called employes of the railroad company names. I have been around the entrance to the shops on two or three occasions since July 1st at about seven thirty in the morning, and I am sure there has not been any assembly there at that hour. I have not been around at four thirty in the afternoon. The majority of these deputies appointed were former employes who were now out on strike, only one, an officer named Klatt was not an employee; he is running a hotel in North Hudson; the twenty-three others are all men who were former employees and are now strikers. I go down on Wisconsin Street, which runs alongside the company's property nearly every day, and I probably was there the morning of August the 2nd, although I can't remember any of the people that were there. I did not see Mr. Larson or Mr. Thorn on that day.

Redirect examination by Mr. Cadigan:

Strikers living in Hudson come over to North Hudson to find out news from Union Headquarters which are located at North Hudson. There must be about two hundred strikers in Hudson which, together with seventy-five or a hundred from North Hudson, make about three hundred strikers altogether. There is just the Willow River between Hudson and North Hudson, just a bridge between the two towns, and it is only a mile from the center of North Hudson to the center of Hudson. There have been no disturbances in North Hudson that have to my knowledge as President of the village; no destruction of railroad property. After the injunction paper was served on us we arranged to police the town in shifts, and they are divided now; there is only the chief who would call them and set them at any beat he would want them; they are divided into a night and day shift and are cautioned to be ready for call in case of trouble. All of the temporary police officers are residents of the village of North Hudson and I am acquainted with all of them, and I selected them with a view of getting the best men possible in North Hudson for that kind of work.

[fol. 101] WALTER CRONK, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Walter Cronk; I am thirty years old and married and have three children; I have lived in Hudson for twenty-one years, and am a member of one of the striking crafts, namely, the black-

smiths' Union and am now on strike. I have no recollection of being in the school house yard on the 1st day of August at the time that Mr. Burton claims to have driven by there, and I have no recollection of yelling at him and the men in the car "Dirty low lived scabs; you are a fine looking bunch of scabs.' My recollection is that I was at strike headquarters that afternoon and I do not remember seeing Mr. Burton and the others going by in a car; I don't remember using any such language to anybody; toward Mr. Burton or any other person.

Cross-examination by Mr. Sprowls:

At the time that Mr. Burton testifies to I was in the position of taking care of the pickets; from four o'clock until nearly five o'clock in the afternoon was my busy time, and from seven or eight o'clock until nine in the morning, I was pretty busy, checking in and checking out pickets. Altogether as pickets we use all the men that are at home and that are available, and we use shifts for every eight hours, one picket at a post. We maintain pickets at the big gate and the small gate, at the crossing on the west side, on the north side and the depot; we keep one at the crossing and one at the west side along the fence, there is a long stretch of fence and no entrance there but we keep a picket there, and one at the depot, and one on the north side; we have six pickets and they are relieved every half hour and I handle it all from headquarters. We make the pickets up in squads; we send them out for half an hour; each man comes and finds out and they know when they are to relieve the other men. I was out at the school house a number of times calling pickets into the school house, but I don't remember being out there lying on the grass; I don't believe I have been out there since the strike has occurred; I am busy every day. I know Mr. Burton and [fol. 102] I have seen him go by the schoolhouse through the headquarters window; I don't remember calling him a scab; I did not call him a scab; I don't remember calling any man a scab. At the west side of the shop grounds there is a long fence with no opening in it; we keep pickets there because some of the men said the others may come across the lake in a boat and maybe the picket could talk to them; we put pickets there so there would be nobody disturbing anything in the shop grounds. I did not understand the restraining order prohibited putting pickets in a place like that. We had two posts on the west side which is a stretch of fence three or four blocks long; a wire fence for one hundred fifty or two hundred feet and then the rest of it is a high board fence, and on the extreme north end of it is a wire fence. We have six posts. The posts are not very far from headquarters and they come over and sit down to lunch or play whist and they hang around headquarters; I don't know how the men arrange it and they take the posts between themselves and go on maybe an hour and a half and the picket relieved would walk down to the beach and go in swimming; the men get tired picketing all the time. I want to live up to the injunction.

Redirect examination by Mr. Cadigan:

With reference to the area of the village of North Hudson, the railroad property is up along the lake shore and within the confines of the village; the village surrounds it and the village streets run around it.

Recross-examination by Mr. Sprowls:

There isn't any entrance on the north side where we maintain a picket. The majority of the pickets stay up at the Union Headquarters and loaf around the schoolhouse until the time comes to relieve the man who is on duty. I can't say whether they loaf around where the pickets are on duty, as I have never been around where the pickets are; I give the men instructions to go away; to be on picket duty and when they were off picket duty to go away. I know nothing about the picket at the gate demanding of men who wanted to go into the shop yard that they go up to headquarters and get a pass before they went in; I have nothing to do with the pass busi- [fol. 103] ness, and I know nothing about it, and I do not know of any case where pickets told men who wanted to go into the shop grounds to get a pass before they could go in. Sometimes a man comes in and wants to get an order to go in and get his tools; otherwise the picket would ask him to stay out.

The picket would let a former employe go in if he didn't have a pass. Some of the men the first morning of the strike had left their tools strewn around the shop and they wished to get an order and they came to headquarters and they said "Maybe we had better get an order so we can show it to the pickets in case they want to ask us to come back."

Arley Martin, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Cadigan:

My name is Arley Martin; I am thirty-four years of age and married; I reside in North Hudson and have two children. I was in the employ of the Omaha Railroad at the time the strike order was issued as a car repairer; I am a member of the car repairers' Union; I am special policeman in the village of North Hudson and was appointed August 1st by the President of the village, and the Board of Trustees. Previous to that time I was deputy sheriff but I resigned on July 14th. I was appointed police officer; I subscribed to a constitutional oath. I found work as special policeman at Hudson more agreeable than work with the sheriff, but I had no difficulty with the sheriff, although he asked me if I wanted to resign and I told him I did on the morning of July 14th. Since I have been special policeman, the only trouble I had with anyone was with a man who was driving a bus; I arrested him for breaking the state

law of speed limits. I heard the testimony of Mr. Larson that he met me on the railroad tracks on the morning of August 2nd; I was past there. I received a call in the morning that they saw somebody drunk down in the yard and they were cursing and swearing, kind of disorderly conduct. I was about two blocks away from where the railroad intersects Wisconsin Street and I went down the highway one block and turned to the left and I took the short cut to where it was reported this disorderly conduct was and investi- [fol. 104] gated and upon by return near the vicinity of the Burkhart Power Milling Company, I saw Mr. Thorn and Mr. Lawson sitting under a shade tree and they spoke and I said "This is a warm morning" and Mr. Larson said "Yes, it is." I walked on over to the power plant and looked over the railing and stopped five minutes and then proceeded direct across up in North Hudson. I heard the testimony of Mr. Touton, Deputy United States Marshal, and I heard him state as to the number of men on August 4th, about seventy-five, that were standing near the place which he described, and I heard him state I was among the crowd. I came on August 4th, that evening, down there; I had got orders to go and see the village marshal and I looked from my door and I could see the main entrance of the shop gates, and I noticed the village marshal's car was there and I went down to ask the village marshal if there was any orders; I walked down to talk to the village marshal and then proceeded down the street and went to the grocery store; I just remained there a few minutes talking to the marshal.

Cross-examination by Mr. Sprowls:

I think it was prior to the 1st day of August that I arrested Grant for speeding; at that time I was deputy town marshal; I was sworn in as a town marshal on the 14th day of July and have been a town marshal since that time, with the exception of one day. Grant was going through the village of North Hudson at the time of his arrest; there was one man in his car and maybe more; I suspected he was hauling this man or others away from the Omaha shops. I have arrested no others for speeding; violating the state laws; fifteen miles per hour, that is the state law; I am not sure if we have a local speed ordinance; I think it is eight miles per hour or twelve. Grant came through the village speeding his car and he hit a little boy with his car and two special policemen stepped off the curb and signalled him to stop but he went right on. On the 4th of August I went by the main entrance and saw Mr. Touton there. There were a few people back from the gate, quite a ways back of the lot; I wasn't noticing very much; I spoke to the village marshal; I couldn't say how many were there. The village marshal's office is one block south from this entrance; I saw the marshal's car [fol. 105] at the entrance to this gate and I went to see if there was any specific duties to do, and then I spoke to Mr. Touton, the Deputy United States Marshal and from there I proceeded due south to the grocery store; I was probably there fifteen minutes, more or less; the crowd was very peaceful. I knew the temporary restrain-

ing order restrained us to one man as a picket. I never went down Wisconsin Street to cross the railroad tracks. I went within one block of where this railroad intersects the street and from there I took the shortest direct possible way that I could to investigate this trouble. I saw Mr. Thorn and Mr. Larson on my way back after making the investigation; they were sitting down by the Burkhart Milling Company. This place is almost due south from the point where Wisconsin Street crosses the railroad tracks. I fix the date as August 2nd because I was re-appointed special policeman on August 1st; my present appointment as policeman has already expired; I turned in my star and offered my resignation; that was on Saturday night or Monday night (August 19th-August 21st); I don't know how many special police there are now in North Hudson and can't say whether they have as many now as they had at the time I was serving.

Redirect examination by Mr. Cadigan:

The path I referred to enters the Burkhart Power Company and goes on down to the ice house, and also leads to the fishing grounds. It also leads to the depot and has been traveled very much and has been used by the public for some time past, ever since I have lived in the village of Hudson, that is since November, 1915. This path is on the railroad company's property most of the way; it is a well marked one man path and in some places two could walk, probably three or four feet apart. I was not at the track entrance with any crowd of men; I was by myself because I was an officer of the law to command peace. There were no other men around me, only Mr. Larson and Mr. Thorn, and the only men I was associated with that morning were those two, and if Mr. Larson or Mr. Thorn stated that they saw me in a crowd, they are mistaken; I did not see any men down there at the crossing where Wisconsin Street crosses the track; I didn't look in that direction; I was one block away from there.

[fol. 106] JOHN HAGEN, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

I am forty-eight years old and live in Hudson; I am a married man with four in the family. I was in the employ of the Omaha Railroad previous to the issuance of the strike order, and I quit worw in pursuance to the order; I was a car man and belonged to the car repairers' Union. I know Mr. Larson and Mr. Thorn. I heard the testimony of Mr. Larson that I was seen by him in the vicinity of the company property on Wisconsin Street where the tracks cross it on August 2nd, 1922. On August 2nd, 1922, at nine thirty in the morning, I was over at the schoolhouse and I walked down that

street towards the lake; I went over the railroad tracks on that street but I did not stop; I didn't see anybody standing there on that street; I walked toward the lake; I stayed there for a while and came back farther down and through a path that goes through there, this path goes over the railroad company's property and lots of people walk there; I have known people to use that path for fifteen years. I never saw an assemblage of people, strikers, around the vicinity of the company's property and I never was present; I never took part in any disturbance around Hudson; was never arrested in my life. I met Mr. Larson on the morning of August 2nd when I was coming back I met him when I crossed the track up to that path; he said "Good morning" and I didn't answer. I usually walk over there and go down to the beach and this is the first time I ever saw Mr. Larson so it must have been the 2nd of August; I was alone; when I went across there in the morning I didn't see anybody around where the railroad tracks cross the street.

Cross-examination by Mr. Sprowls:

On the morning of August 1st I suppose I was over at the school house. On July 30th about nine thirty I was home, I guess. My recollection as to the morning of August 2nd is because it was the only time I met Mr. Larson; I do not look at the dates when I go out. I crossed the railroad tracks right on the street and didn't see any [fol. 107] crowd; after I got across the railroad track I left the road and went over that way; I saw Mr. Larson and then I came back and I could see the point where the railroad tracks cross the road when I went up the path. I should think it must have been around nine o'clock. I met Mr. Larson when he came down the path toward the depot; I didn't see anybody else but Mr. Larson and he was on the railroad tracks. I didn't look up the railroad tracks from there and I could see if I had looked.

Redirect examination by Mr. Peter Cadigan:

I crossed the street at the railroad tracks at nine o'clock on August 2nd and went back by the short cut; the short cut crosses the railroad tracks about a block or a block and a half or so away from the intersection.

DAN CULLEN, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

I am forty-two years old and married and I have one adopted child; I live in North Hudson and am one of the railroad strikers. I worked for the Omaha previous to the strike and am a member of the blacksmiths' organization. I have lived in North Hudson for four years and I have been in Court during the hearing on this matter. I have acted as picket for the strikers but I was not so acting

on the morning of August 2nd, 1922. On the morning of August 2nd, I was home until about nine or nine thirty and I went down Wisconsin Street; I go down that street a whole lot; I go down there bathing lots of times; that is the way to the bathing beach. In going that way you cross where the railroad tracks run into the company's property. On the morning of August 2nd I saw a picket there at that point; he was Ole North. There may have been somebody else there, I don't know. I did not stop but went right on down to the bathing beach; I didn't stay long at the bathing beach and walked back. I do not recollect seeing Mr. Thorn about nine thirty that morning nor Mr. Larson. There is nothing in particular that calls the date of August 2nd to my mind but I am pretty sure it was that [fol. 108] day. I remember seeing Ole North there and I think there was somebody else there to; I didn't pay any attention to them; I went right along.

Since the injunction was served I have not participated with other men in assembling around the company's property, either at the gate or around the premises of the company for the purpose of preventing work or intimidating employes and preventing them from working. I have not been in any disturbance or attempted in any way to interfere with the operation of the company's propery and their business in North Hudson. I go down the path that has been described right along, two or three times a week, sometimes in the evening. There is a friend of mine named Sutherland and I go down to his place quite a lot over this path; the path is generally used by the public and has been so for ten years; during that time people used to go across to Dr. Till's place. This path leads to the bathing beach but I have never used the path to go to the depot.

Cross-examination by Mr. Sprowls:

I was down there across the tracks on August 2nd at about nine o'clock and did not see either Mr. Thorn or Mr. Larson. Mr. North was on picket duty; I think there was someone else near by; I could not say how many or who they were; I did not speak to them. North is the only one I noticed; I didn't pay any particular attention. There were cars going across there and people going across; I just walked down there and came back; I went right along by where the track crosses the road. When I came back there were some around this place but I never noticed who they were; I could not say whether Mr. North was there or not at that time but I think he was. I go down there pretty nearly every day; sometimes I go down bathing; sometimes I go to Sutherlands; on that particular morning I thought I would go down and have a bath, but I didn't take any so I came back. I didn't see Mr. Larson or Mr. Thorn either going up or coming back.

Redirect examination by Mr. Peter Cadigan:

There was nobody on the tracks except Ole North who was standing in the middle near a bunch of ties and he was the picket.

[fol. 109] CLARENCE MICHAELSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Clarence Michaelson; I live in North Hudson and have lived there practically all my life; I am nineteen years old and was working in the Omaha shops at North Hudson previous to the strike order as a car repairer; I am a son of the defendant Sam Michaelson. From the 15th to the 29th of July I was in Camp Douglas in army training, being a member of the National Guard; I got back to Hudson on the night of July 29th. I heard the testimony of Mr. Larson that he saw me on August 1st with other men at this railroad crossing where it intersects Wisconsin Street; I also heard the testimony of Mr. Burton to the effect that on August 1st near the shop entrance he saw me standing near in company with other men; Joe Peterson and someone else; I do not remember seeing Mr. Burton that day, and I did not yell "Dirty scab, dirty low lived scab" at him, and I did not shake my fist at him. On August 1st I was five miles east of Hudson working for Walter Baker, farmer; I started working for him the morning of July 31st; On July 30th I was on picket duty on the north end, at the little opening in the fence which leads to the shops. On July 31st I left Hudson at six fifteen in the morning for Walter Baker's farm and arrived there about seven fifteen; I went by automobile and worked all day July 31st; that was on Monday; I returned to North Hudson that night about eighty thirty and I was not near the railroad property on that day. The following day I went again to Mr. Baker's farm, leaving at the same time and was in company with one William Peterson; I was at the farm all day August 1st and I think we stayed at Baker's farm that night and came back to Hudson on the 2nd; I also worked for Baker on the 2nd and again on the 4th, 5th, 7th and 9th of August. On August 3rd I was with William Peterson at Hudson at his home. I was picketing on August the 8th at the same place near the north end. When I came back to Hudson I did not wear any soldier's uniform but I had army pants and leggins on that I purchased at an army store; also a shirt; also army hat and was wearing that around Hudson at the time. I was not in Hudson on July 27th at all, but was at Camp Douglas.

[fol. 110] Cross-examination by Mr. Sprowls:

Walter Baker is not in the court room. William Peterson went out every day we went to Bakers, and he is not in the Court room. I can remember the days I worked for Baker. From the army clothes that I wore I looked as though I had a uniform on. When I was picketing up at the north side of the shop grounds I didn't see anyone trying to enter from that side; the only access was a little opening where some fellows from Stillwater had come through on

the 15th of July; I saw them myself before I went to Camp Douglas. The fence is a wire fence at that point, and has a big hole in it; I do not remember seeing Mr. Burton about the entrance to the shop grounds at all within two or three days after I got back from Camp Douglas, and neither did I see Mr. Larson at that point. I was not down at the main entrance gate leading into the shop grounds within the first week after I got back from camp. William Peterson lives in North Hudson and is a man who is out on strike and Mr. Baker is still living out on a farm near Hudson.

MATT ANDERSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Matt Anderson and I live in North Hudson and have lived there for seventeen years; I am married with a family of four children, the youngest of whom is about sixteen years. I was employed at the Omaha shops previous to the strike; I was appointed as a special policeman in North Hudson on the 1st of August by the Village Board, and was sworn in. I heard the testimony of Mr. Larson about my being on this railroad property on August 2nd at about nine thirty in the morning; I know the place he describes where the tracks cross Wisconsin Street; I was there on the morning of August 2nd at about nine thirty, A. M.; there was nobody there with me; I did not see Ole North there. I stopped and saw Mr. Thorn coming down the track and saw Mr. Larson coming right after him and I looked down the track and I wondered what was going on; saw Mr. Larson pass me and said "Good Morning, Mr. [fol. 111] Larson" and that was all and Larson went on down and I went home. I was on police duty that day but did not have my star. I had to cross over the track to come back and I wasn't down there over half an hour; I was watching some fishermen pulling in a seine. I know it was August 2nd because that is the only time I have been down there this month; I believe August 2nd was on a Wednesday.

Cross-examination by Mr. Sprowls:

I served as special deputy marshal in Hudson before this time; I was appointed for years but I was not a deputy marshal there prior to August 1st; the village wanted me to be a special police when the strike started but I refused because I thought I was getting too old; I accepted an appointment on August 1st and went down across the tracks there on that morning; there was a picket there that morning, but I don't remember who he was. I did not cross the railroad tracks that morning; I wasn't where the railroad tracks enter the shop grounds; I know the place; I went down Wisconsin Avenue that day, but didn't have to cross the tracks at that

point; I took a short cut alongside the trail, a short cut down toward where I crossed; this is, I should judge, about three or four hundred feet below that crossing; the picket was there on the crossing but I don't know who he was. I saw Mr. Thorn when he was coming down on the path; I went down there first ahead of Thorn and when Thorn came back I was on my way back home again when I met Thorn. I met Mr. Larson on my way back but I can't say exactly what time; I remember it was in the forenoon. I saw Mr. Cullen on the path but didn't see John Hagen, Arley Martin or Art Daniels. There was quite a bunch of women and children up where the picket was.

Redirect examination by Mr. Peter Cadigan:

There was also some men at the crossing, but I don't know who they were; I was not there at all.

[fol. 112] OLE NORTH, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Ole North; I live in Hudson and have lived there over thirty-six years, and was employed by the Omaha Railroad previous to the strike as a machinist; before the strike I was in their employ thirty-six years; I am on strike at present. I heard Mr. Larson testify that he saw me on August 2nd, I don't remember seeing him; I was picket that day from eight, A. M., to four, P. M.; I was on the crossing about an hour or two and then we changed off; we can't have more than one picket on the crossing and I was on the crossing that day; this is the point where the Omaha tracks run into the property, over a public street. I don't remember who I saw that morning as there is so many traveling back and forth and there may be a hundred going by there every day; I can't keep track of all of them; it is a busy place. I don't remember seeing Matt Anderson there that day, or Mr. Cullen or Fred Henstra, or Sam Michaelson or Clarence Michaelson or Joe Richie; I saw lots of men but I don't remember who went by there; I don't remember seeing any of these men. I didn't see any crowd in the morning that I remember; there was none where I was standing; I don't remember any women or children or anything of the kind assembling at or near this place; there are no buildings around there.

Cross-examination by Mr. Sprowls:

There are not any buildings on the other side of that crossing for about a mile; people go down to the bathing beach by there in the morning and all the time; I don't remember whether Dan Cullen went by that morning or not; I don't keep track of the people that

go by; I don't put down their names. I went on picket duty at eight o'clock that morning and I was there all the rest of the forenoon. There may have been a crowd there and I may have seen Mr. Larson but I don't remember if I saw him or not; he might have passed by me there for all I know; probably I saw Mr. Thorn but I [fol. 113] don't remember; I saw Mr. Larson and Thorn come out of the entrance of the shop yards very often when I was on picket duty; I have only been on that crossing twice since the strike; I heard Mr. Anderson say that he saw a crowd up there that morning and there may have been, but I don't remember how big that was. Walter Cronk assigned me to picket duty at that particular point, he was the man in charge of the pickets and Secretary of our local organization. We had three pickets there between the hours of eight and four, but there is only one picket that has the right to be up on the crossing; the other pickets are at the side of the crossing; I was stationed right in the middle of Wisconsin Street where the tracks cross it and the other two pickets were on the side of the opening into the shop enclosure; they are up there on the side of the one hundred and fifty feet opening so there are three men that are covering that opening; there is only one place to enter and that is the opening of one hundred fifty feet. They have got three pickets at every place all around where employes come and go; I don't know who determined that there should be three pickets at every place; I suppose it is the practice to maintain three pickets at each place of ingress and egress, and as far as I know they are still doing it. I read the restraining order that was served down there July 20th or 21st and it says we can keep one picket on the center and I guess they can have three altogether and change off; nobody said anything to me about it when they appointed me and that is all I know. I mean by saying they could have three if they changed off; when they put us on picket duty there is three to each entrance and the law says there can't be more than one on duty at a time and I do not figure that they are on duty until they go into the center of the street, but the practice was that when I stood in the center of the street on picket duty, the other two pickets remained at the side of the opening. I am not a officer of the Union. I was present when the Deputy United States Marshal explained the restraining order to the men. There were two extra men down there at the side of this opening on the morning of August the 2nd but I don't remember who they were; they have got it marked down in a book at Union Headquarters, but I don't think any of the twelve defendants in this case were picketing with me that morning.

[fol. 114] Redirect examination by Mr. Peter Cadigan:

The pickets are assigned in squads of three and they relieve each other at the posts of duty. I don't know how wide that crossing is and I can't tell how far they were away. The entrance into the shop yards is about one hundred fifty feet wide and each picket was probably fifty or sixty feet away from me; there is a big shade tree there and when the sun is hot they lay under the tree; the tree is not at the

side of the road close to the railroad property but on the other side, and these men were across the street under the tree and that is generally where the other two pickets stayed that relieved me; there are no benches or seats under the tree. I don't know who the other two men were, whether they were officers, policemen or not; men wearing stars never act as pickets. I have done picket duty at pretty nearly all other points except at the big gate. It is very seldom that three pickets are together; they are mostly out around on duty and generally only one man. On the west side of the railroad property they are walking back and forth and they have six pickets on that side; there is one at the northwest corner and one a little farther down this way outside that railroad fence. There are six pickets on duty at the same time but they are not all together; they are spread out, and there are three assigned to each post; that would make eighteen, and that is all the pickets there are all over the property, including the main entrance and everything else; there are three pickets on each entrance where they enter and there are six on the west side where there is no entrance at all; there can't anybody get through the fence there; they have got six pickets on the west side of the railroad property and three on the north side, either three or four these are not bunched together, they are just there single; these eighteen are not all on duty at the same time.

WALTER CRONK, one of the defendants herein, recalled as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. Peter Cadigan:

I am an officer of the local and am in charge of the pickets during the strike; they are assigned in army form by putting in squads; the [fol. 115] first man will leave at say eight o'clock and he goes down and takes the post for half an hour or an hour, whatever they make up between themselves, sometimes the men wanted to do a little work at home and one man will take the shift for maybe half a day and then the next time their turn comes the other party that left they will give this other man a chance to make up for that, and the same way at all posts. They come back down to the schoolhouse or they go home, downtown, about a mile walk; they change off so they can go home to their meals so there will be only one picket, and they have all been thoroughly instructed. One picket is assigned for duty at a post and there are three in a squad; they are assigned for eight hours so we can get them any time within that eight hours. Three are assigned to one point changing to suit themselves so that there will be only one picket. Sometimes they will go on and one man will take it for pretty near all day alone, and the other two will go swimming, or come down to the headquarters and loaf around there and go home.

Cross-examination by Mr. Sprowls:

They do not hang around the gate; I do not know whether there are three there at any entrance at the same time. I heard Mr. North testify that there were three men at this entranc on Wisconsin Avenue at the same time; also that there were six men at the same time on the west side of the shops where there was no entrance; also that there were six men on the north side of the shop ground but they were not all up there at the same time as I know of; they were assigned three to a squad. We instructed the men that there should be but one at a time.

JOE PETERSON, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Joe Peterson; I live in North Hudson; I am a married man and have lived there three years; I was employed by the Omaha Railroad previous to the 1st of July as an apprentice carpenter and am now out on strike; I know Mr. Larson and Mr. Burton and have [fol. 116] known them for some time; my age is twenty-four. I was acting as a special policeman in the village of Hudson, being appointed on the 14th day of July; I wasn't at the main entrance on the 1st day of August and did not call Mr. Burton or the man with him scabs as he testified; I was at home on the 1st of August, my wife being sick and under a doctor's care. My mother lives with us; she is about sixty. I report at strike headquarters every day about eight o'clock in the morning; I never called Mr. Burton a scab; I don't think either Mr. Burton or Mr. Larson belongs to any union local; around the 1st or second of August and after that time I was over at the main entrance on some mornings to see if the village marshal had any orders for the day or not; the village marshal's name is Jean Ritchie and he is out on strike.

Cross-examination by Mr. Sprowls:

I heard the testimony of Mr. Touton, United States Deputy Marshal, and I remember seeing him one evening down at the store but I don't think I ever saw him in a crowd down at the main gate, except once, and that was about one hundred fifty feet from the main entrance and there were not very many there; I didn't stop but went home; I did not go around there during the time that my wife was sick and she was sick during the time Mr. Touton was there and I told the village marshal as long as my wife was sick, I could do no duties but that if I had to be called I would do the best I could; I kept my star; I report to Union Headquarters every morning. I lived in Baldwin, Wisconsin, previous to living in North Hudson and worked on a farm and in a garage. The only way I can remember that I was not down at the entrance to the gate on the afternoon of the 1st of August was that my wife was ill and the doctor was there

at the time—Dr. Synon; I called him up and he came there about four o'clock and stayed until five; I fix the date as the 1st of August as my wife was worse that day, but made no memorandum of it, but I saw the doctor's books when I went down to pay him; the doctor made eight or seven trips; I think the doctor's bill shows the hours that he made the call on different days; I have not got the doctor's bill with me. The strikers do not claim that Mr. Larson and Mr. Thorn have no right to work and I don't know whether they regard Mr. Burton as a man who should have gone out on strike or not, and [fol. 117] have no opinion on Mr. Burton's case; I do not regard Mr. Burton as a scab and think it is all right for him to stay at work.

Redirect examination by Mr. Peter Cadigan:

My wife got worse on August 1st and I called up the doctor about half past three and it was four o'clock when he got there; that is how I place the date; I told him it was an urgent call and to come as soon as possible.

FRED HENESTRA, one of the defendants herein, called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Fred Henestra; I live in North Hudson and am married; I have three children; I have lived in North Hudson for eight years and worked in the Omaha shops previous to July 1st and am now out on strike. I heard Mr. Larson state that on August the 2nd he saw me with several other men at the railroad crossing; I remember crossing that place that morning between eight and ten o'clock and was going down to the bathing beach to swim, and went in swimming and was there about fifteen minutes; I was with a man, a friend, by the name of Olson; there were five or six others in swimming at that time; after I came out I walked back along Wisconsin Street but did not see Mr. Larson or Mr. Thorn; I did not see Mr. Cullen; all that I saw was Mr. North, the picket, and he was alone. It is a usual practice of mine to go down to this place and go in swimming; I do it quite often, three or four times a week, and some times every day; I remember the date was August 2nd because Ole North was the picket, and I looked in the books; I do not know if any one else was on picket duty there that day.

Cross-examination by Mr. Sprowls:

I went across the tracks on Wisconsin Street that morning and saw Mr. North there alone; I saw no one in the vicinity; I didn't see any other men going in the direction of the bathing beach at the time; neither Dan Cullen nor Arley Martin; I did not see Sam Michaelson at the crossing that morning, nor Matt Anderson, nor [fol. 118] John Hagen; no one else was in sight; the only way

I fix the date as August 2nd was the fact that Ole North was the picket; I didn't pay any attention to whether he was on picket duty at that entrance at other times or not; I did not look to see whether he was on duty on the 3rd; I don't know whether I went swimming on the 4th of August or not and can't remember who I saw on picket duty the last time before August 2nd, and can't remember who I saw on picket duty at any other time. When this rule to show cause was served on me I went and looked in the book and found that Ole North having been on duty that day, that it was the 2nd of August I went down and crossed the tracks.

Redirect examination by Mr. Peter Cadigan:

I am absolutely sure it was the 2nd day of August.

ART DANIELS, one of the defendants herein, called as a witness on behalf of the defendant, was duly sworn, and testified as follows:

Direct examination by Mr. Peter Cadigan:

My name is Art Daniels; I live in North Hudson and have lived there about seven years; I am married and have three children; I heard the testimony of Mr. Larson that about nine thirty, A. M., of August 2nd that I was at the intersection of the Omaha Railroad track and Wisconsin Street near the railroad property; I was not there; I was out in the country on a farm; Fred Scoville's farm, about five or six miles out of town; doing general farm work; I went out on the 1st of August which I think was on Tuesday; I arrived there about eight o'clock in the evening and was alone, and stayed all that night and also stayed there the second and left the farm between two and three o'clock on the afternoon of the 3rd for North Hudson; I have not been paid for the work and did not make a memorandum of it; I did not talk over with Scoville about the time I worked there except to ask him if he remembered the date and that is all.

[fol. 119] Cross-examination by Mr. Sprowls:

I worked at that farm before and since the dates mentioned; I was not there the 14th day of July but I was there on the 28th and 29th; I am sure those are the days. I was there on August 1st and went alone; Mr. Scoville is still living on the farm but is not in Court. The reason I state I was not down at the tracks on Wisconsin Street on the morning of the 2nd is because I think it was on that morning I was out on Mr. Scoville's farm. I know the location of the railroad crossing; there is only one place of that kind where the tracks go into the shop yards and I do not remember being down there at any time about the 1st of August or seeing Mr. Larson or Mr. Thorn there; I was a picket down there with William Stanley and another man. When on picket duty I stood on the

tracks at the crossing and when I was on duty Stanley was over away from the tracks altogether and under a tree; some times he and the other man would go up the road and some times they would go over towards the store; the other man would be going one way or the other; I couldn't keep track of where they were all the time but I know they weren't near me when I was on duty. Three were assigned to a post. I was never on duty there but twice; I think it was along the middle part of July; I worked five or six days for Mr. Scoville in all and am sure that two of those were August 1st and 2nd and part of the 3rd; I also worked for him the 29th and 30th of July; I was also out there about the 8th of August, but can't remember the exact date.

Redirect examination by Mr. Peter Cadigan:

At the time I was on picket duty at the intersection of the railroad track and Wisconsin Avenue neither of the other men were close to me and sometimes they were not there at all; they were not picketing with me at the same time. The tree is about a hundred and fifty feet away from the place where the picket stands and the store is about two blocks away; sometimes the picket would walk up towards the store; each time I picketed there were three men assigned in a squad to the place but at no time I was there assigned to picket duty were three men on duty at the same time;

The Court: Mr. Daniels, were there any instructions given to the squad of pickets as to what should be done by the two pickets who [fol. 120] were not on duty, if anybody came along to go into the shop and were stopped by the picket who was on duty, any instructions given to you?

A. No sir.

Whereupon the defendants rested their case.

The plaintiffs offered no testimony in rebuttal.

Which was all the evidence offered or received on the hearing of the above matter.

JUDGMENT

The Court: In the proceeding of the Chicago, St. Paul, Minneapolis & Omaha Railway Company as relator against Sam Michaelson and others, the court finds that on or about August 1st, 1922, in the afternoon of said day, Clarence Michaelson, formerly an employee of the railway company, and at that time and now out on strike with the striking shopmen, was one of a group of men that were unlawfully and in violation of the restraining order issued out of this court, located at the main entrance to the shops of the railway company in North Hudson, and that at that time when several of the employes of the railway company left the grounds said Clarence Michaelson threatened and used abusive language towards them, and was violating the injunction in so doing and in being at that place in company with others, and that such conduct on the part of said Clarence

Michaelson was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff in this action, as well as being in violation of the restraining order heretofore entered, and the court's conclusion is therefore that the said Clarence Michaelson is guilty of the acts charged in the relation.

The penalty which should be imposed in this case in all of these cases is a matter of serious perplexity on the part of the court. The court would gladly take the suggestion of the defendant's counsel and merely deliver a reprimand in these cases if the court deemed it consistent with his duty; that would be a very easy way out of it for the court, and a pleasant way out of it for the defendants.

But the court issued its warning to these defendants in the most solemn form in which a court can issue its warning, in the shape of a restraining order, signed by the clerk, sealed with the seal of the court, and delivered and made known to each of these defendants, and that process was served by the marshal of this district, or his deputy, [fol. 121] with instructions to explain what that order meant, and I have no doubt but what that was done. So it seems that the time for warning has gone by, and it is the duty of the court to do something more. At any rate that is what the court conceives to be his duty, and that must be done.

This particular defendant, Clarence Michaelson, is very young. His conduct was most reprehensible. But that does not grieve the court so much as the fact that that defendant would come on here before the court and swear to an alibi.

In the court's judgment there is no doubt about his identity, and that he was there and did the acts testified to by Mr. Burton and Mr. Larson, and it grieves the court more I say that this young man should come here and deny those things, than it does that he should have committed the acts which the court finds he did commit. Were he older he ought to go to jail, but in view of his age I have decided that he ought not to go, and hence in his case it is the judgment that he forfeit and pay a fine in the sum of $50 and in default of which he will be committed to the Douglas County Jail.

With reference to the charge against Joe Peterson, the court finds that on the afternoon of August 1st, 1922, he also was assembled with others at the main gate of the shop grounds of the Omaha Railway at North Hudson, and that he was unlawfully there, being in company with numerous others, and that he used abusive language towards the employees as they were coming out of the railroad property, and that therein Joe Peterson violated the restraining order of this court, and that such misconduct on his part was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with justice.

With regard to his case it appears in addition that not only was he doing what he was actually doing, picketing for the strikers, but he was there wearing the badge of authority of the village of North Hudson, being at that time appointed one of the deputy police officers, but instead of doing his duty as a police officer he was there violating the order of this court.

Judgment will therefore be entered against Joe Peterson that he forfeit and pay a fine in the sum of $100, and that in addition thereto he be committed to the Douglas County jail for a period of fifteen days. In the event of the failure to pay the fine he stand committed to that jail until such fine is paid.

[fol. 122] With reference to the charges made against the defendant, Walter Cronk, the court finds that he did use abusive language towards employees of the plaintiff while they were on their way from their places of work to their homes; that such acts were calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with justice, and that such acts were in violation of the restraining order of this court.

This particular act on the part of Cronk, the evidence showing that his abusive language was hurled at the employees of the plaintiff when he was alone and at some distance from the plant of the plaintiff, is not considered by the court so very serious in itself. Far more serious were the facts that developed upon the hearing, that this man Cronk is in charge of pickets at North Hudson, and consistently and wilfully has directed and placed pickets around the property of the plaintiff here in violation of the injunction and restraining order.

Some little evidence was elicited in this case by the attorneys and by the court with reference to that practice which had no particular relation to the charges now on trial, and the court is disregarding and not considering that evidence in the determination of the issues here involved. The Court expressly excludes that from its consideration in determining the facts here, and in view of the fact that this man Cronk is not charged here with the really serious violation of this restraining order which his own evidence shows he may be guilty of, the court must confine itself to the charge, which, as I have already indicated, is bad enough and mean enough.

The court does not consider it requires any great punishment to satisfy the plaintiff or the court. And so for the charge upon which Cronk has been ordered to show cause here a fine will be imposed upon him of $10. In default of its payment he will be committed to the Douglas County jail.

With reference to the other defendants, Sam Michaelson, Dan Cullen, Fred Henestra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen and Arley Martin, the court finds that on or about the morning of August 2, 1922, they and each of them were among and formed a part of a group of strikers assembled at a point of ingress and egress to the shop yards of the relator company, and that their presence there was by way of picketing, and that they were assembled there for the purpose of intimidating and preventing the plaintiff from securing men to go into its employment, and of [fol. 123] intimidating and preventing men who might wish to go into the employment of the plaintiff, and that in so being present at that time and place the defendants I have just named, and each of them, violated the restraining order of this court, and are in con-

tempt of this court; that such misconduct on the part of these last named defendants and each of them was calculated to and actually did defeat, impede and prejudice the rights and remedies of the plaintiff, and did defeat, impede and interfere with the administration of justice; and it is the judgment of the court that the defendants, Sam Michaelson, Dan Cullen, Fred Henestra, Ole North, Art Daniels and Arley Martin, each forfeit and pay a fine of $100, and that the defendants Joe Ritchie and John Hagen each forfeit and pay a fine of $50, and that as to each of said defendants found to have committed the act above referred to on the morning of August 2nd, in default of the payment of the fine assessed against him each will be confined in the Douglas County jail.

Execution will be stayed until next Wednesday morning at 10 o'clock, at which time the fines and each of the fines must be paid, or the defendants will deliver themselves to the marshal, and if they do not the marshal will apprehend them, which stay applies to all except the defendant Joe Peterson. In his case he is remanded to the custody of the marshal forthwith.

Now, it has been a matter of perplexity to me to understand how there has come about at North Hudson, among men whom I am convinced in ordinary times are not law violators, such general disregard for the law of the land, a violation of the solemn order of a court of this country, which is your country, and I have been unable to avoid the inference that it is largely due to the fact that the local authorities are so closely associated with the strike movement, and so thoroughly in sympathy with it, that the striking men at North Hudson have forgotten that there is any law except the law of the union to which the local authorities seem to have lent themselves.

Now, gentlemen, remember there is a law of the land, and it must be and shall be, so far as this court is in power to make it so, enforced. You have your rights to go on strike; nobody denies that to you; but going on strike is a quitting of work by the body of workmen in the employ of a given employer for the purpose of improvement in wages or working conditions. It gives you no right to interfere with that employer from securing other employees; it [fol. 124] gives you no right to prevent other employees from going into the employment of the employer.

Your rights in a controversy of this kind have been very accurately and carefully worked out in the restraining order and the injunctions that have been issued from this court. You have not been interfered with in the exercise of any of your valid rights. Every man is entitled to work, and the men who present themselves at the shops of the Omaha Company in North Hudson for employment at this time, even while you are on strike, are entitled to go to work unmolested, and the Omaha Company, or any other employer, is entitled to put those men to work unmolested.

You have a right to make known to the employees that there is a strike on, and you have been provided with one picket at each point of ingress and egress, you have been permitted to have one, to notify prospective employees that there is a strike on. If employees present

themselves for work there that picket who is located there has a right to state the situation, but if that prospective employee does not wish to listen you have no right to dog him and make him listen.

This thing can all be worked out peaceable under the law, and it must be. You know just as well as I do that when you have a group of men located at a point where you expect employees to be, that the group was put there for the force that their numbers may have. It is a form of intimidation. So you are limited to your one man.

And by the way, in the exercise of your rights, that man will be protected by this court, you will be protected in the exercise of your lawful prerogatives in this strike just as much as the railway company. But you must not exceed your lawful rights.

Now, as I have stated at the outset, this whole matter is a matter that grieves the court. There is no pleasure for the court, or I take it, anybody else, to have ordinarily law-abiding citizens haled up before the court for punishment for violating the court's order. But you must bear in mind, gentlemen, that things are going to move peaceably in this district if we can make it so, and all of the authority of the court is going to be exercised to see that this matter is conducted peaceably.

The court does not intend, and will not, take sides in your controversy; that is not the business of the court, but to see that both sides act within the law in carrying on the controversy is within the [fol. 125] court's province, and the court intends to operate within that province.

Are there any suggestions?

(Mr. Faricy spoke to the court out of the hearing of the reporter.)

The Court: The court will correct its judgment against the defendants in the case before the court. In the list of those defendants who are to pay a fine of $100 should be included the defendant Matt Anderson who seems to have been omitted.

Tuesday, August 29, 1922—4 o'clock p. m.

The plaintiff appeared in court by Messrs. Powell & Sprowls, its attorneys, and the defendants by Messrs. Cadigan & Cadigan, their attorneys, whereupon the following proceedings were had:

Mr. Sprowls: I move at this time that the title of this case be amended so as to appear United States ex rel Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. Michaelson et al.

Mr. Cadigan: We have no objection to the amendment.

Mr. Sprowls: Then it will appear United States ex rel., Chicago, St. Paul, Minneapolis & Omaha Railway Company vs. Sam Michaelson, et al.

The Court: Very well, motion granted.

Mr. Cadigan: I have a telegram, your Honor, saying it is understood this case from Hudson is to be taken up, but I have not been able as yet to get in touch by long distance telephone with the local union at Hudson, and would like a little further time, a little further stay.

The Court: How long a time?
Mr. Cadigan: Well, I think by Friday.
The Court: Any objection?
Mr. Sprowls: No, no objection.
The Court: Very well, stay granted until Friday, 10 A. M.

[fol. 126] MOTION FOR NEW TRIAL—Filed Sept. 5, 1922

And now, after judgment in the above entitled cause, come Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen, Arley Martin, Clarence Michaelson and Joe Peterson, defendants, by Cadigan & Cadigan, their attorneys, and move the Court to set aside the Judgment rendered in this case as to them, and grant them a new trial, and for reasons of said motion show unto the Court the following:

1. The Court erred in admitting certain irrelevant, incompetent and immaterial evidence offered on the part of the Government.

2. The Court erred in refusing to grant the defendants demand for a jury trial, as provided by Section Twenty-two (22) of the Clayton Act, socalled.

3. That the judgment of the Court is contrary to the law and the evidence.

4. That, after demand made by the defendants for a jury trial, the court was without jurisdiction to try the issue as framed by the relation and affidavits and the defendants separate answers thereto.

For all of the foregoing reasons, the defendants respectfully request that the judgment of the Court be set aside and that a new trial be granted in this cause.

Cadigan & Cadigan, Attorneys for Defendants.

Which motion for a new trial was, after argument by counsel for and against the motion, respectively, and after due consideration of the Court, on the 5th day of September, 1922, overruled.

[File endorsement omitted.]

[fol. 127] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS—Filed Oct. 28, 1922

Thereafter, on the 28th day of October, 1922, and within the time allowed by the said United States District Court, the plaintiffs in error, defendants below, duly tendered this, their Bill of Exception herein, which, having been seen and examined by the Court and counsel, is by the Court allowed and approved, and the said Bill of Exceptions

is signed and sealed by the Honorable C. Z. Luse, the Judge of said Court before whom said proceedings were had and the same is ordered by the said Court to be filed and made a part of the record herein, which is now accordingly done.

Given under the hand and seal of the Judge of said Court before whom said proceedings were had, this 28th day of October, 1922.

C. Z. Luse, Judge of the United States District Court for the Western District of Wisconsin. (Seal of Court.)

The above and foregoing Bill of Exceptions is hereby approved.
Cadigan & Cadigan, Attorneys for Plaintiff in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[fols. 128-130] Let the Bill be filed and the filing shown of record as of this 28th day of October, 1922.

C. Z. Luse, District Judge.

(Endorsed: Filed Oct. 28, 1922. Wm. H. Comerford, Clerk. By H. E. Ticknor, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS—Filed Oct. 28, 1922

[fols. 131-133] Comes now the Chicago, St. Paul, Minneapolis & Omaha Railway Company, complainant above named, by Powell & Sprowls, its attorneys, and moves the court to dismiss the above entitled suit in equity with prejudice, but moves that the said dismissal may be without prejudice to any contempt proceedings now pending which arose out of violations of the temporary restraining order or temporary injunction issued in said suit in equity.

Chicago, St. Paul, Minneapolis & Omaha Railway Company, by Powell & Sprowls, Its Attorneys.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER OF DISMISSAL—Filed Oct. 31, 1922

[fol. 134] On motion of the complainant above named, by Powell & Sprowls, its attorneys, to dismiss the above entitled cause,

It is hereby Ordered, that the above entitled suit in equity be and the same is hereby dismissed with prejudice.

Dated October 31st, 1922.

C. Z. Luse, Judge.

[File endorsement omitted.]

[fol. 135] UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

[Title omitted]

PETITION FOR A WRIT OF ERROR AND ALLOWANCE THEREOF—Filed Sept. 9, 1922

To the Honorable Circuit Court of Appeals of the United States of America in and for the Seventh Circuit and to the Honorable Presiding Judge of said Court and to the other Judges of the said Honorable Court:

The petition of the foregoing plaintiffs in error, who reside in the city of North Hudson, State of Wisconsin, respectfully shows:

That on the 24th day of August, 1922, there was filed in the District Court of the United States of America for the Western District of Wisconsin, a Petition and supporting affidavits charging your petitioners, and each of them, with Crimfinal Contempt of said District Court. The petition and supporting affidavits were identical in words and figures with the exception and that names of your petitioners were changed in the various petitions. That a true and correct copy of said petition and supporting affidavits are hereto attached, marked Exhibit "A" and made a part hereof. That as a result of the filing of said petition and supporting affidavits, your petitioners were taken into custody by the United States Marshal on an attachment issued out of said Court and your petitioners were arraigned before said Court on the 25th day of August, 1922, and each of them made a plea to the said petitions and affidavits of "Not Guilty." That thereafter your petitioners duly moved the said Court that they be granted a jury trial as provided by law. That said motion was duly presented and argued before said Court, and the same was denied by the said Court. That testimony was then re-
[fol. 136] ceived by the said Court and at the close of said testimony, petitioners, through their counsel, duly moved the said Court for a dismissal of said action on the ground and for the reason that the said petition and supporting affidavits did not therein state an offense against any law of the United States or against any lawful order of this Court and for the further reason that the evidence had failed to substantiate the charges made in the petition and affidavits and had wholly failed to prove beyond a reasonable doubt any offense by your petitioners against any law of the United States or against any lawful order of this Court. The Court denied said motion and in connection with the Court's remarks in regard to the same, the Court made statements which your petitioners conclude and believe prove that they were not accorded the presumption of innocence to which they were by law entitled and that they did not receive the benefit of reasonable doubt but that the said Court proceeded on the theory that the filing of the petition and signing of the said affidavits by the complaining witnesses, all of whom were interested in the outcome of

the case, placed your petitioners in a position where they were compelled to prove beyond a reasonable doubt that they were not guilty.

Wherefore: Because of the many and manifest errors hereinbefore set forth, to their prejudice, your petitioners pray that a Writ of Error may issue to their behalf out of the Circuit Court of Appeals for the Seventh Circuit, for the correction of the errors complained of and that a transcript of the testimony, record, proceedings and files in this cause, duly authenticated may be sent to the said Circuit Court of Appeals for its review and consideration, to the end that said judgment and conviction may be reversed and justice done according to law, and to this end your petitioners will ever pray.

Matt Anderson, John Hagen, Dan Cullen, Art Daniels, Fred Hanstra, Artley Martin, Ole North, Clarence Michaelson, Sam Michaelson, Petitioners. Cadigan & Cadigan, Attorneys for Petitioners, Superior, Wisconsin.

[fol. 137] ALLOWANCE OF PETITION FOR WRIT OF ERROR—Filed September 9, 1922

The foregoing Petition is hereby allowed. Bond is fixed at the sum of Two Thousand Dollars, the same to act as a Supersedeas Bond and also as a Bond for Costs and Damages on appeal.

C. Z. Luse, United States District Judge.

Dated September 9th, 1922.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERROR—Filed Sept. 9, 1922

The Petitioners, Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, R. Daniels, Joe Richie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson, make and file herein with their petition for a writ of error, the following assignments of error which they aver occurred upon the trial of the case and resulted to their prejudice, for which they submit that they are entitled to a reversal of the judgment therein.

The Court erred:

I. In denying the defendants' motion for a jury trial as provided by law.

[fol. 138] II. In denying the defendants' motion for a dismissal at the close of the testimony on the ground and for the reason that the petition and supporting affidavits did not therein state an offense against the laws of the United States or any wilful offense against any order of the Court.

III. That the said petition and supporting affidavits are wholly insufficient in law in that they do not charge a violation of any law of the United States of America and do not charge any wilful violation of any order of the Court.

IV. That the evidence is wholly insufficient to sustain the judgment, and that the said Court had no jurisdiction to impose sentence.

V. In imposing sentence on the petitioners for the reason the same is without warrant in law.

VI. In entering judgment against the defendants.

Cadigan & Cadigan, Attorneys for Petitioners.

[File endorsement omitted.]

[fols. 139–141] In the District Court of the United States

[Title omitted]

Appearance Bond on Writ of Error—Filed Sept. 9, 1922; for $2,000; approved to operate as a supersedeas; omitted in printing

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[fol. 142] In the District Court of the United States

[Title omitted]

Writ of Error—Filed Sept. 11, 1922

United States of America, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Western District of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States on the relation of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, Plaintiff, and Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt Anderson, John Hagen, Arley, Martin and Clarence Michaelson, Defendants, a manifest error hath happened, to the great damage of the said Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson, Defendants, as by their complaint appears, We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, within thirty days from the date hereof, that the [fol. 143] record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Howard R. Taft, Chief Justice of the United States, on the 11th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Wm H. Comerford, Clerk of the District Court of the United States for the Western District of Wisconsin, by H. E. Ticknor, Deputy.

Allowed by C. Z. Luse, Judge.

[File endorsement omitted.]

UNITED STATES DISTRICT COURT

[Title omitted]

RETURN OF ORDER, ETC.

In obedience to the within stipulations and orders herein I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, a true and complete [fol. 144] transcript of the record and proceedings in the foregoing entitled cause as required in said order and stipulations herein, this 2nd day of November, A. D. 1922.

William H. Comerford, Clerk of the District Court for the Western District of Wisconsin, by H. E. Ticknor, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed October 31, 1922

It is hereby stipulated by and between counsel for the plaintiffs in error and the defendant in error, that the following parts or papers in the record need not be printed.

1. Præcipe for summons.

2. Summons and amendments and orders relating thereto.

3. Returns of Marshal to all processes.

4. Bond for costs.

5. All affidavits in support of petition for preliminary restraining order and temporary injunction, and in opposition thereto.

6. Affidavits attached to answers and returns of plaintiffs in error, defendants below.

It is also stipulated that the following papers, copies of which are returned, shall not be printed, for the reason that the same ap-
[fol. 145] pear in full and will be printed as part of the bill of exceptions.

1. Motion for a new trial.

It is also stipulated that no endorsements to any papers be printed, with the exceptions of the filing marks or stamps of the Clerk of Court.

Dated this 30th day of October, 1922.

Cadigan & Cadigan, Attorneys for Plaintiffs in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[File endorsement omitted.]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed October 30, 1922

To the Clerk of the said Court:

You are hereby requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit pursuant to a Writ of Error allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Bill of complaint in equity.
2. Answer to bill of complaint in equity.
3. Preliminary restraining order.
4. Subpœna issued on preliminary restraining order.

[fol. 146] 5. Order of July 29th, 1922, continuing preliminary restraining order in effect to August 8th, 1922.

6. Amendment to bill of complaint in equity inserting Village of North Hudson in the complaint and restraining order dated July 29th, 1922.

6A. Order of August 8, 1922, continuing preliminary restraining order to Aug. 18th, 1922.

7. Temporary injunction issued August 18th, 1922.
8. Petition for rule to show cause why the plaintiffs in error should not be punished for contempt.
9. Affidavits of Albert Larson and W. Y. Burton in support of petition for rule to show cause.
10. Rule to show cause.
11. Order granting motion for contempt.
12. Answer and return of each plaintiff in error to rule to show cause, but not affidavits attached to said answer.
13. Petition for writ of error and allowance thereof.
14. Assignments of error.
15. Writ of error.
16. Bond on writ of error.
17. Citation.
18. Order for enlargement of time for return of citation dated October 10th, 1922.
19. Order for enlargement of time for return of citation dated October 28th, 1922.
20. Motion of relator to dismiss bill of complaint in equity and order thereon.
21. Bill of exceptions.
22. Certificates of trial judge to bill of exceptions.
23. Stipulation as to omission of certain parts of record from the printed case.
24. Præcipe designating parts of record to be included in transcript of writ of error.
25.

Dated this 30th day of October, 1922.

Cadigan & Cadigan, Attorneys for Plaintiffs in Error. Powell & Sprowls, Attorneys for Defendant in Error.

[File endorsement omitted.]

[fol. 147] UNITED STATES DISTRICT COURT

CERTIFICATE OF CLERK

I, William H. Comerford, clerk of the District Court of the United States for the Western District of Wisconsin, at Superior, do hereby certify that I have compared the foregoing transcript of record (except the Bill of Exceptions) in my office in the case herein lately pending of the United States of America, ex rel. Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation, Plaintiff, versus Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Richie, Matt. Anderson, John Hagen, Arley Martin, and Clarence Michaelson, Defendants, and that the same is a correct transcript of the parts stipulated to be sent up, except backing, and of the whole thereof including filing, as appears from the records of said Court, remaining in my custody.

I. Testimony whereof, I have hereunto set my hand and duly affixed the seal of said Court, at the City of Superior, in said Western District of Wisconsin, this 2nd day of November, in the year of our Lord one thousand nine hundred and twenty-two and in the Independence of the United States of America the one hundred and forty-seventh.

William H. Comerford, Clerk, by H. E. Ticknor, H. E. Ticknor, Deputy Clerk. (Seal of Court.)

[fol. 148] [Title omitted]

CITATION—In usual form showing service on Powell & Sprowls; filed September 11, 1922, and omitted in printing

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[fol. 149] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR ENLARGEMENT OF TIME FOR RETURN OF CITATION—Filed Oct. 10, 1922

Now, on this 10th day of October, A. D. 1922, upon showing made and upon the application of Cadigan & Cadigan, attorneys for the plaintiffs in error above named, for an enlargement of time for the return of the citation heretofore issued in said cause, and Messrs. Powell & Sprowls, attorneys for the Relator, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, having due notice of said [fol. 150] application, and no objections having been made thereto, It Is Ordered, by the Court, that the time within which the said plaintiffs in error, above named, may file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, the transcript of record herein be, and the same is, hereby extended to and including the 4th day of November, 1922.

By the Court:

C. Z. Luse, District Judge.

[File endorsement omitted.]

[fol. 151] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CLERK'S CERTIFICATE

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 150, inclusive, contain a true copy

of the printed record, printed under my supervision and filed December 9, 1922, on which the following entitled cause was heard and determined: Sam Michaelson, et al. v. United States, ex rel. C. St. P. M. & O. Railway Company, No. 3221, October Term, 1922, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of December, 1923.

Edward M. Holloway, Clerk of the United States Court of Appeals for the Seventh Circuit. (Seal of the Court.)

[fol. 152] [Caption omitted]

UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPEARANCE—Filed November 22, 1923

The Clerk will enter my appearance as counsel for the Plaintiffs in Error.

John A. Cadigan, Peter B. Cadigan, Superior, Wisconsin.

[File endorsement omitted.]

[fol. 153] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPEARANCE—Filed December 7, 1923

Lyman T. Powell, Lyman T. Powell, John S. Sprowls, John S. Sprowls, Superior, Wisconsin.

[File endorsement omitted.]

[fol. 154] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SETTING CAUSE FOR HEARING

It is now here ordered that this cause be, and the same is hereby set down for hearing Wednesday, May 2, 1923.

[Title omitted]

ARGUMENT AND SUBMISSION

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. John A. Cadigan, counsel for plaintiffs in error, and by Mr. John S. Sprowls, counsel for defendant in error, and the court having heard the same, takes this matter under advisement.

[fol. 155] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDERS GRANTING LEAVE TO FILE BRIEFS

On application of Mr. Donald Richberg, leave is hereby granted to file a brief in this cause on behalf of Shop Craft Unions within ten (10) days.

[Title omitted]

On application of Mr. John O. Sprowls, counsel for defendant in error, leave is hereby granted to file a reply brief within seven (7) days of the date of the service of the brief on behalf of the Shop Crafts Union.

[fol. 156] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Baker, Evans, and Page, Circuit Judges

OPINION—Filed July 11, 1923

BAKER, Circuit Judge, delivered the opinion of the Court:

This writ of error brings up for review judgments against plaintiffs in error for criminal contempt.

On July 1, 1922, these men went out on the so-called strike of the shop-crafts unions. Shortly thereafter the trial court, on the bill and motion of the railroad company, relator herein, entered a temporary restraining order which was found in this proceeding to have been violated.

I. As the case is here on writ of error the challenge of the sufficiency of the evidence goes only to the question whether a prima facie case of violation was made. Bessette v. W. B. Conkey Co., 194

U. S. 324. We have examined the evidence and find an abundant showing against plaintiffs in error to support the finding of intimidation of shop workmen and of picketing by groups in a manner condemned in recent cases. American Steel Foundries v. Tri-City [fol. 157] Central Trades Council, 257 U. S. 184; Truax v. Corrigan, 257 U. S. 312.

II. After this contempt case had been brought here, the railroad company dismissed its bill for injunction. This did not have the effect of canceling these judgments which had already been entered.

III. Did the court err in overruling the demand of plaintiffs in error for a jury trial?

Section 20 of the Clayton Act (Comp. St. 1918, Sec. 1243 d) speaks of the respective rights of "employers and employees" in any injunction case "involving or growing out of a dispute concerning terms or conditions of employment."

Under Section 21 (Comp. St. 1918, Sec. 1245 a), if an injunctive order is violated by the doing of an act which would be "also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed," the offender shall be proceeded against for contempt as provided in Section 22 (Comp. St. 1918, Sec. 1245 b), namely: "Such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information."

Counsel seem to be agreed, and we think properly so, that plaintiffs in error, in order to have the benefit of the Clayton Act, must have been "employees" within the meaning of the Act from the time of the so-called strike down till after the violations.

They also do not question that the violations would constitute criminal offenses under statutes of the United States and of Wisconsin.

But they do not agree upon the construction of Section 22. Counsel for defendant in error point to the permissive word "may" in the phrases, "the trial may be by a jury" and "the court may impanel a jury." For plaintiffs in error it is argued that the permissive word "may" is to be construed as mandatory wherever that course is necessary in order to preserve the clear meaning of other words and phrases in the context (36 Cyc. p. 1160), and that the word "demand" (to claim as a matter of right) and the phrase "a jury shall [fol. 158] be impaneled" and "such trial shall conform to the practice in criminal cases" require that permission be taken as duty. Obviously there is an ambiguity, an inconsistency, an opposition of words. We think the ambiguity can be cleared by a reference to the history of the times preceding the Clayton Act and a consideration

of the asserted evil to be cured by the proposed legislation. For many years political and social writers and speakers had been denouncing the interference of judges in the combats between labor and capital and had been insisting that the question of unlawful conduct in such combats should not be decided except by jury trial. A political party gave a pledge to abolish "government by injunction," meaning by that quoted phrase the chancellor's use of punitive and coercive means to enforce the chancellor's decree which, after full hearing and subject to the right of appeal for the correction of errors, adjudged that proven trespasses upon property should cease. And the bill, introduced by Senator Clayton, was drafted by the labor unions. As drafted the bill did not contain the ambiguity we now find. In the course of the bill's progress to enactment a word was inserted which may be given a permissive or a mandatory sense. Rather than attribute to Congress an intent to issue a "brutum fulmen," it should be agreed that the intent was to give to the special class in special cases the absolute right to trial by jury.

Nevertheless plaintiffs in error were not entitled to a trial by jury.

(1) If their going out on the so-called shop-crafts strike ended the relation of employer and employee between them and the railroad company, they would not be within the special class selected by the Clayton Act.

In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiffs in error that a "strike" does not of itself terminate the relation of employer and employee. A controversy arises, and the employees, then at work, say to their employer: "We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working rules, and ready to return to work the moment we can agree." If, by reason of a failure to agree, the employees stop their work, a "strike" is on. They are no longer working and receiving [fol. 159] wages; but, in the absence of any action other than above indicated looking to a termination of the relationship, they are entitled to rank as "employees" with the adjective "striking" defining their immediate status. And a "lockout" by the employer is the exact counterpart of the "strike" by the employees. In the industrial combat the two sides must have equal and reciprocal rights in exerting economic pressure. 5 Illinois Law Review 453; 31 Yale Journal 321; Iron Moulders' Union v. Allis-Chalmers Co. 166 Fed. 45; Gasaway v. Borderland Coal Corporation, 278 Fed. 56; Uden v. Schaeffer, 188 Pac. 395.

Among the cases in the Supreme Court dealing with the respective rights of capital and labor in economic controversies, those arising in private and local industries predominate. Loewe v. Lawlor, 208 U. S. 274; Paine Lumber Co. v. Neal, 244 U. S. 459; Hitchman Coke & Coal Co. v. Mitchell, 245 U. S. 229; Duplex Co. v. Deering, 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades

Council, 257 U. S. 184; Truax v. Corrigan, 257 U. S. 312. In the American Foundries case, the strike involved a steel plant in Granite City, Illinois. In the Truax case, the center of the industrial storm was a restaurant on "Main Street" in Bisbee, Arizona. In no case of which we have cognizance has the point been made that the rules for economic combats in private and local industries, which society tolerates, have no just application to our present-day system of railroad transportation. When common carriers were few and small and relatively local, when the interference with the non-combatants was no greater than in a private industry, and when the common carrier was unfettered as a combatant, there could be no greater objection to a strike against a common carrier than to one against a restaurant. In all such cases the non-combatants will have to wait until advancing civilization shall have put the strike in limbo with the duel. At the time of the Pullman strike (In re Debs, 158 U. S. 564), though the disturbance in and about Chicago was very considerable, the railroad unions did not have their hands at the throat of the Nation, and the railroads as combatants had not become completely fettered. Today the concerted action of railroad unions in stopping transportation might destroy our industries and imperil the lives of our people. But it is not upon a consideration of public distress or public necessity that we base a legal distinction exempting interstate railroads from the "strikes" that are permissible in private industry. To be a legal distinction (and not a mere suggestion of [fol. 160] further Congressional action) it must be based on the interpretation and application of the law as it stands today.

(a) Interstate railroads are under control of the Interstate Commerce Commission with respect to the nature, quality and amount of service to be given to passengers, to shippers, and to other carriers. Comp. St. 1918, Secs. 8563-8583; Comp. St. 1923, Sec. 8563, Subd. 10-21. This service is the only commodity that the railroads have, from the sale of which they can derive an income. A private employer, free to fight and engage in one of these so-called "industrial combats," might consider it wise to sign a treaty of peace giving his employees higher wages, because legally he could cheapen his commodity to the same degree and thereby keep his business alive. Interstate railroads have no such control of their commodity.

(b) Or the private employer, being legally free to do so, might think it best to make up his increased cost of production by increasing the price of his commodity. Interstate railroads have no such control of their prices. The Interstate Commerce Commission on its own initiative has power to classify and regulate the business, and to fix maximum or minimum, or maximum and minimum, or the particular rates, fares or charges for all the business. Comp. St. 1923, Sec. 8583 (1).

(c) Or the private employer being legally free to do so, might conclude to shut up shop, wind up his business, and quit. Interstate railroads have no legal right to quit. Most of them have State charters for fragmentary parts of their systems. Most of them have parts that were welded together by concurrent permissive legislation of several

States. It is not merely the consequences of violating or failing to live up to the requirements of the State charters that are to be considered; all interstate railroads are now forbidden to "abandon all or any portion of a line of railroad or the operation thereof" without the approval and certified consent of the Commission. If they should attempt to quit without such consent, the Attorney General, or the Commission, or a State Commission, or any party in interest, is authorized to go to court and get an injunction on showing an attempted or intended abandonment of operation. Title IV of the Transportation Act, 1920; Comp. St. 1923, Sec. 8563 (18)-(20).

From the foregoing considerations it is apparent that interstate railroads are bound hand and foot. They have no choice as to what they will sell or for how much. They dare not quit. They are [fol. 161] forbidden by law to quit. They can not exert any sort of "economic pressure" in any sort of "industrial combat." They are powerless to use the "lockout" as a weapon against their employees.* Turning back now to the definition of a "strike," we see that, in an industrial combat wherein the rights of the combatants are equal and reciprocal, the strike was only tolerated as a weapon on one side because the other side was armed with an equivalent weapon. Mutual freedom is the vitals of "collective bargaining" or any bargaining. In our judgment the very principles on which the strike was originally found to be lawful now require that the Interstate Commerce Act and Title IV of the Transportation Act be interpreted and applied to forbid an assault upon a helplessly fettered opponent and to forbid the calling of such an act a combat.

It follows that plaintiffs in error were not engaged in a lawful strike. Their acts toward the railroad company were necessarily the same as those of strangers. Consequently they were not qualified to demand a jury trial under the Clayton Act.

This does not mean that, because employees can not conduct lawful strikes against interstate railroads under the law as it now stands, they have become enslaved or in any way bound to work. Arthur v. Oakes, 63 Fed. 320. It merely means that when they refuse to work, either singly or collectively, they sever themselves from their jobs. They are then at perfect liberty to seek new employment.

(2) Another ground supports the conclusion that plaintiffs in error, on and after July 1, 1922, were not employees carrying on a controversy over wages and working conditions with the railroad company as their employer, and therefore were not entitled to invoke the benefit of the jury provision in the Clayton Act.

In its bill of complaint the railroad company set forth the substance of Title III of the Transportation Act of 1920. Comp. St. 1923, Sec. 10071¼, subd. ee-jjj. That part of the Act creates the Railroad Labor Board and treats of the duties of the Board in reference to wage and other disputes between interstate railroads and their employees. On May 25, 1922, the Board rendered its decision fixing

*The fact that the Commission could not constitutionally deny an interstate railroad the right to abandon its line or a part thereof if there was no reasonable prospect of profitable operation in the future (Bullock v. R. R. Comm. of Florida, 254 U. S. 513, 521), does not militate against the position that an interstate railroad is forbidden by law to use the "lockout."

wages for employees in the shop crafts, to become effective on July 1, 1922. The railroad company accepted said decision, and intended [fol. 162] and attempted to comply therewith; but plaintiffs in error and the other employees in the shop crafts refused to abide by the decision, and in defiance of the Board abandoned the service of the railroad company.

Although beyond a moral sanction there is no penalty for violating the Board's decision except the Board's publication of its opinion that its decision is being violated (Title III of the Act, Sec. 313, Comp. St. 1923, Sec. 10071¼ iii, Pennsylvania Rld. Co. v. United States Railroad Labor Board, — U. S., —, Feb. 19, 1923), that part of the Act declares a public policy which should be accepted and made effective in civil actions irrespective of the character and amount of punishment prescribed for the offenses viewed as crimes or misdemeanors.

In our judgment, therefore, the so-called strike of the shop-crafts unions was a controversy with, or a strike against, the Labor Board as an instrumentality of our National government, and is to be classed with the insurrection of the Boston policemen.

Here, again, there is neither enslavement nor legal compulsion to work; the men are at liberty to quit, singly or collectively, but must recognize that they no longer are employees of their former employer.

(3) Accepting for the sake of the argument the contention of plaintiffs in error that they were entitled to invoke the jury provision of the Clayton Act, nevertheless their demand for a trial by jury was rightly denied because that part of the Act is unconstitutional.

Article III, Sec. 1: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Article III, Sec. 2, Par. 1: "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Article III, Sec. 2, Par. 2, after defining the original jurisdiction of the Supreme Court, proceeds: "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The original jurisdiction of the Supreme Court comes directly from the Constitution and can not be enlarged or diminished by Congress. The appellate jurisdiction of the Supreme Court can be [fol. 163] limited as to subject matter and regulated as to procedure. Appellate jurisdiction assumes the existence of trial courts. And Congress in ordaining trial courts and other courts inferior to the Supreme Court can limit their jurisdiction as to subject matter and regulate their procedure. Viewing the inferior courts, and also the Supreme Court as an appellate tribunal, we see that Congress, the agency to exercise the legislative power of the United States, can, as a potter, shape the vessel of jurisdiction, the capacity to receive; but,

the vessel having been made, the judicial power of the United States is poured into the vessel, large or small, not by Congress, but by the Constitution.

Some terms in the Constitution are, and were meant to be, relative. For example, "due process of law" and "liberty" in the Fifth and Fourteenth Amendments were not intended to limit the police power forever to those matters which it had laid hold upon when those amendments were adopted. Other terms are, and were meant to be, absolute. They cover now exactly the same ground they did when adopted, without possibility of enlargement or diminution except by amendment. For example: "Habeas corpus" in Article I, Sec. 9; "trial by jury" in Article III, Sec. 2, Par. 3, and in the Sixth and Seventh Amendments; "cases in law," "cases in equity," "criminal prosecutions," "indictment of a grand jury," "suits at common law," in Article III, Sec. 2, Par. 1, and in the Fifth, Sixth and Seventh Amendments.

Congress may limit the jurisdiction of an inferior court to hearing criminal cases, or to designated kinds of criminal cases; but Congress can not constitutionally deprive the parties in such a court of the right of trial by jury. The same is true of trials of "cases in law." And the jury in such a civil or criminal court must comprise twelve jurors and their verdict must be unanimous. Similarly Congress may limit the jurisdiction of an inferior court to hearing "cases in equity," or to designated kinds of equity cases; but Congress can not constitutionally deprive the parties in an equity court of the right of trial by the chancellor. Martin v. Hunter's Lessees, 1 Wheat. 331; In re Atchison, 284 Fed. 604.

A proceeding called a contempt proceeding, perhaps not very happily, is the means of executing the decree in equity. A plaintiff has been found by a decree in equity to be entitled to enjoy certain property rights without being further disturbed by the defendant. But the defendant persists. To enforce the decree the court may try the deterrent effect of fine, or imprisonment for a definite period, or may [fol. 164] give the plaintiff civil relief by keeping the disturber away until the plaintiff is in the secure enjoyment of his property rights. Either way, the vindication or enforcement of the decree must be held to be an inherent power of the equity court, a power within the power to render the decree. In re Debs, 158 U. S. 564 at pp. 593-6.

The judgments are affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—Filed July 11, 1923

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Wisconsin and was argued by counsel.

[fol. 165] On consideration whereof: It is now here ordered and adjudged by this court that the judgments of the District Court in this cause be, and the same are hereby affirmed with costs.

And afterwards, to-wit: On the ninth day of August, 1923, in the October term aforesaid, there was filed in the office of the clerk of this court a certain petition for rehearing, which said petition for rehearing is not copied here nor made a part of this record.

And afterwards, to-wit: On the twenty-second day of August, 1923, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Answer to Petition for Rehearing which Answer to Petition for Rehearing is not copied here nor made a part of this record.

IN U. S. CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed September 21, 1923

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

[fol. 166] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed December 13, 1923

The Clerk will please prepare a record of proceedings in the Circuit Court of Appeals, together with the record of the District Court, for use in the Supreme Court of the United States in accordance with this præcipe:

Nov. 22, 1923.—Appearance for plaintiff in error.
Dec. 7, 1922.—Appearance for Deft. in error.
April 24, 1923.—Cause set for hearing.
May 2, 1923.—Heard.
June 6, 1923.—Order.
June 11, 1923.—Order.
July 11, 1923.—Opinion.
July 11, 1923.—Judgment.
Sept. 21, 1923.—Order.

Donald R. Richberg, Peter B. Cadigan, John A. Cadigan, by David E. Lilienthal.

[File endorsement omitted.]

[fol. 167] UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 16, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel, the petition for rehearing and the Answer thereto, and stipulations extending time to file briefs) in the following entitled cause: Sam Michaelson, et al. v. United States, ex rel. C. St. P. M. & O. Railway Company No. 3221, October Term, 1922, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of December, A. D. 1923.

Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal of the Court.)

[fol. 168] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 708

[Title omitted]

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

On consideration of the petition for a writ of certiorari herein to the United Circuit Court of Appeals for the Seventh Circuit, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

January 14, 1924.

Enl

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

No. 708.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON, *Petitioners,*

vs.

THE UNITED STATES, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

The petitioners seek a review of the judgment of the Circuit Court of Appeals of the Seventh Circuit (affirming the judgments of the District Court of the United State for the Western District of Wisconsin) based upon its opinion that the petitioners were "rightly denied" a trial

by jury, to which they were entitled under "the jury provision of the Clayton Act, . . . because that part of the Act is unconstitutional." (Record, p. 162.)

The petitioners were striking employes of the Chicago, St. Paul, Minneapolis and Omaha Railway Company who were accused of violating (by verbal intimidation of other employes) the temporary restraining order of the District Court issued July 20, 1922. After a rule to show cause why they should not be punished for contempt and answers and pleas of not guilty by the present petitioners (then defendants) the case came on for trial August 25, 1922, and a motion for a trial by jury was made by counsel for the defendants as a matter of right under Section 22 of the Clayton Act. This motion was denied. (Record, p. 74.) Following a trial by the judge alone, the defendants were found guilty and fined. The opinion of the Circuit Court of Appeals (printed as an appendix to the present Petition, and also found in the Record, pp. 156–164) holds:

I. That a prima facie case of violation of the injunction was made.

II. That the subsequent dismissal of the railroad company's bill for injunction did not cancel the judgments entered.

III. That the court did not err in overruling the demand for a jury trial.

In reaching its third conclusion the court holds preliminarily:

a. That the defendants, to have the benefit of the Clayton Act "must have been 'employes' within the meaning of the Act."

b. That the violations constituted "criminal offenses" under the statutes of the United States and of Wisconsin.

c. That the intent of the Clayton Act "was to give to the special class in special cases the absolute right to trial by jury."

Thereupon the court holds:

(1) That the defendants "were not engaged in a lawful strike," because the railroad was made by law "a helplessly fettered opponent;" and therefore they should not be classed as "employes."

(2) That "the so-called strike of the shop-craft unions was a controversy with, or a strike against, the Labor Board as an instrumentality of our national government;" and therefore the strikers should not be classed as "employes."

(3) That, assuming the defendants were entitled as "employes" to demand a trial by jury, the jury provision of the Clayton Act is unconstitutional, because "Congress can not constitutionally deprive the parties in an equity court of the right of trial by the chancellor."

Specifications of Error.

The petitioners represent that in each of the three rulings above set forth the Circuit Court of Appeals erred and as a result of each and all of said rulings erred in affirming the judgments of the District Court.

The petitioners particularly represent that the court erred in holding that Section 22 of the Clayton Act is unconstitutional (which holding clearly determined the judgment of the court), and represent that Congress, in providing in the Clayton Act for a trial by jury of offenses "of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed," acted under the express mandates of the Constitution requiring: (1) that "the trial of all crimes shall be by jury" (Article 3); and (2) that " in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury" (Amendment VI).

ARGUMENT.

I.

This is a "Criminal Prosecution" by the United States.

a. It will be noted at the outset that this is a case of "criminal contempt"—and is so described in the opening sentence of the opinion of the Circuit Court of Appeals. If it were a "civil contempt," the contempt proceedings, being interlocutory, would terminate with the disposition of the original case, which was dismissed on motion of the complainant. (Record, p. 131.) Such a dismissal would be without prejudice to the power and right of the court to punish for contempt by appropriate "criminal" proceedings. But contempt proceedings for the benefit of a litigant —"civil contempt"—would end with the withdrawal of the litigant by the dismissal of his bill.

> Gompers et al *vs.* Buck's Stove and Range Co., 221 U. S. 418.
> Worden *vs.* Searles, 121 U. S. 27.

b. The United States is named as complainant by order of court. (Record, p. 125.)

c. The offenses charged are criminal offenses. (Opinion of Circuit Court of Appeals, Record, p. 157.)

(1) Sections 4466a and 4466c of the Wisconsin Revised Statutes for 1921 read as follows:

> "Sec. 4466a. Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in

the county jail not more than one year or by fine not exceeding five hundred dollars."

"Sec. 4466c. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage worker, or who shall attempt to so hinder or prevent shall be punished by a fine not exceeding one hundred dollars, or by both fine and imprisonment in the discretion of the court."

(2) The bill of complaint charges that the defendants were acting "in violation of the Statutes of the United States prohibiting conspiracies in restraint of interstate commerce." (Record, p. 15.)

(3) The Circuit Court of Appeals in its opinion holds the strike to be, in effect, a conspiracy against the government.

It appears clearly therefore that the present judgments rest on the presumption (at least) that this is a proceeding by the United States against the defendants to punish them for violations of the order of the District Court, which violations are also criminal offenses under the Statutes of the United States and of the State of Wisconsin.

Certainly the proceeding is not a civil action by a private party for the establishment of his rights. Therefore it is remarkable to observe that the Circuit Court of Appeals holds that, in this criminial prosecution by the United States, a right of trial by jury specifically granted by Act of Congress may be denied on the ground that "Congress can not constitutionally deprive the *parties* in an equity court of the *right of trial by the Chancellor.*" (Italics ours.)

The court holds, in effect, that the United States has a constitutional "right of trial by the chancellor" in a proceeding wherein the Congress of the United States has provided that the defendant shall be entitled to a trial by jury! The peculiar logic and absolutely unprecedented character of such a ruling present strong reasons for the issuance of a Writ of Certiorari.

II.

There is no "inherent power" in the chancellor to punish summarily indirect contempts.

It is quite commonly assumed that the power of the chancellor to deal summarily with cases of direct and indirect contempt has been recognized and exercised from "time immemorial." It appears on the contrary that for hundreds of years even direct contempts (including violent conduct in open court) were uniformly dealt with by information, presentment or indictment *and trial by jury*. This is shown by a review of all the known cases of contempt from the time of the Magna Charta to the death of Henry V. (Mr. Solly Flood in Transactions of the Royal Historical Society, New Series, Volume 3, 1886.) Later developed the practice of the court dealing summarily with direct (or active) contempt and meeting out punishment; and also the practice of summary imprisonment *to compel obedience to a decree.*

> "Thus imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the king *Down to within a century* it was very doubtful if the chancellor could under any circumstance inflict punishment for disobedience to a decree. . . .
>
> "It thus appears that imprisonment for contempt of the chancellor's decree, or rather for contempt of the king's writ issued in execution of such decree, was not punitive but coercive; and that anything in the nature of a sentence to a definite punishment, like a fine or an imprisonment for a term, was entirely foreign to the process."
>
> Joseph Henry Beale, Jr., in Harvard Law Review, January, 1908.

It is submitted that it is "very doubtful," if, when the Constitution of the United States was written, there was any recognized, "inherent" authority in a court of equity

to *punish* summarily for indirect contempts. Yet the holding of the Circuit Court of Appeals that an Act of Congress is unconstitutional rests wholly on this "very doubtful" basis. The court holds that when Congress creates a court of equity "the judicial power of the United States is poured into the vessel, large or small, not by Congress, but by the Constitution." But does the Constitution pour into that vessel judicial power not commonly exercised by courts of equity when the Constitution was written? Or does the Constitution continue to pour into that vessel any judicial powers that courts of equity in this or other lands take unto themselves from time to time—even in opposition to the express enactments of the law-making branch of the government—even in repudiation of the precedents of hundreds of years?

III.

The petitioners were "employes" within the meaning of the Clayton Act.

The Court of Appeals agreed with counsel for the petitioners that a strike does not of itself terminate the relation of employer and employe—*in private industry*. But, the court made a "legal distinction" regarding strikes *in the transportation industry*, holding that *such* strikes severed the relationship. It is submitted that the same factors which determine the status of employes on strike in other industries determine the status of employes on strike in the transportation industry.

Does the relationship of employer and employe continue during a strike or lockout?

In order to answer this question, it is necessary first to consider what a strike is. It will be evident immediately that it is not a quitting of *employment;* otherwise the

strikers would have no further interest in the business which they had abandoned and many of the controversies incident to a strike would never reach the courts. The following definitions of a strike are helpful in reaching an understanding of its effect upon the relationship of employer and employe:

WHAT IS A STRIKE?

> "A strike is a stoppage rather than an abandonment of work." 31 Yale Law Journal, page 321.
>
> "A combined effort among workmen to compel the master to the concession of a certain demand by preventing the conduct of his business until compliance with the demand." Farmers L. & T. Co. *vs.* Northern Pacific Railway Co., 60 Fed. 803, 821.
>
> "A combination among laborers, to compel an increase in wages, a change in hours of labor, some change in the mode or manner of conducting the business of the principals or to enforce some particular policy in the character or number of the men employed, or the like." Del. etc. Railway Co. *vs.* Bouns, 58 N. Y. 573, 582.
>
> "The act of quitting work specifically, such an act by a body of workmen done as a means of forcing compliance with demands made on their employer." Longshore Printing Co. *vs.* Howell, 26 Oregon 527, 541.
>
> "A combination among employes having for its object their orderly withdrawal in large numbers or in a body from the service of their employers on account simply of a reduction in their wages is not a strike within the meaning of the word as commonly used." Arthur *vs.* Oakes, 63 Fed. 310.

The effect of the above definitions is well summed up in the following case which shows the essential element in a strike is the intention to return to work.

> "In the common acceptation of the term it is not a 'strike' for the workmen of an employer to quit

his employment and go elsewhere, without any intention of returning, nor is it a 'strike' for workmen to refuse to enter into the employment of a particular contractor. A 'strike' in such common acceptation, is the act of quitting work by a body of workmen for the purpose of coercing their employer to accede to some demand that they have made upon him, and which he has refused; but it is not a strike for workmen to quit work, either singly or in a body when they quit without intention to return to the work whatever may be the reason that moves them so to do."

Uden *vs.* Schaeffer, 188 Pac. 395, p. 396, Supreme Court of Washington, 1920.

What is the Effect of a Strike Upon Relationship of Employer and Employe?

In Iron Moulders' Union *vs.* Allis-Chalmers Company, 166 Fed. 45, the concurring opinion of Judge Grosscup reads as follows:

"The foregoing opinion so compactly and clearly sets forth the correlative rights and the correlative obligations of employer and employes when engaged in a strike or lockout, that it is with hesitation that I add this word; and I only add it that nothing that is contained in the opinion, may be construed to relate to the correlative rights and the correlative obligations of employer and employes in any relationship other than their somewhat anomalous relationship pending a strike or lockout.

"A strike is cessation of work by employes in an effort to get for the employes more desirable terms. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties. The employes who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the em-

> ployer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or a lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe that is neither that of the general relation of employer and employe, nor again that of employer looking among strangers for employes, or employes seeking from strangers employment. And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, neither strike nor lockout pending, persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employes not to take employment with given employers, upon which questions we do not as I understand it, express any opinion."

A recent Canadian case passes directly on the question now under consideration. In this case there was an indictment against an agent of the United Mine Workers of America for aiding an employe to continue a strike by giving merchants cheques for goods supplied to strikers on his order. The indictment was based on the Industrial Disputes Investigation Act which made the giving of such aid to an "employe" unlawful. A defense was raised that as the man was on a strike he was not an employe and to this the court replied:

> P. 491: "Then it is said that Morien was not an employe when the assistance was given, because he had gone out on a strike sometime previously, but it will be noted that he was not dismissed by the company and that it was open to him to return to work if he chose. If such an argument could prevail, then all men who go on a strike would cease to be employes, then the Act would be useless.
>
> "The magistrate finds as a fact that said Francis

> Morien went out on a strike with other employes on the 9th of July, 1909, and was an employe of the said Invernes Railway & Coal Company at the time, and as such employe continued on strike up to and including the date of the laying of the information.
>
> "I think his finding was right, and that Morien was and remained an employe of the company in the same way as all others who went on strike with an avowed purpose of compelling the company to comply with their demands."
>
> Rex *vs.* Neilson, 44 N. S. 488.

It appears from the above authorities that a strike itself does not terminate the relationship of employer and employe. So long as a striker holds himself ready to return upon acceptable conditions, and the employer holds himself ready to use his services upon acceptable conditions neither party has taken an action completely severing the relationship. Of course, it may be open to the employer to discharge the strikers and to terminate all relationship, using the strike as a cause. But the strike *itself* does not accomplish this result.

It may be here noted that during the shopmen's strike the railroads repeatedly addressed the shopmen in advertisements calling upon them as "employes" to return to work. It is doubtful whether a single railroad ever took definite action to terminate absolutely the relationship previously existing between the road and the shop craft employes. It was repeatedly asserted, for example, that pension rights of employes were being preserved.

Perhaps a consideration of what constitutes an "employment" may clarify the situation. A relationship of employment may exist without activity on the part of either employer or employe. It is not dependent upon the rendering of service or the payment of wages. A contract of employment may exist wherein during periods of idleness no work is being done or wages paid, but the relationship of employer or employe continues. A contract may exist providing for

arbitration of grievances. One of the grievances covered may well be the laying off of men without just excuse and it would be clearly absurd to say that the employer by laying off men could terminate the relationship and thereby make the protections in the contract of employment ineffective.

A very good example of the continuance of the relationship of employer and employe in connection with the railroads (despite the cessation of work and payment of wages), is found in the rules governing the work of the shop craft employes affecting all important railroads and particularly the one concerned in the present case. These rules, as promulgated by the Railroad Labor Board and put in force, provide, for example, as follows:

Rule 27 requires that when forces are reduced senority shall govern and that "in the restoration of forces senior laid-off men will be given preference in returning to service."

Rule 28 provides as follows:

> "Employes laid off on account of reduction in force, who desire to seek employment elsewhere, will, upon application be furnished with a pass to any point desired on the same railroad."
>
> (See Decisions U. S. R. R. Labor Board, Vol. II, pp. 576, 577.)

This last rule is particularly impressive as showing that men laid off on account of reduction in forces are still regarded as employes because otherwise the carrier would be violating the law in furnishing them with passes. (See Interstate Commerce Act, Sec. 1 (7), Sec. 22.) It cannot well be argued that the railroads, with the sanction of the Railroad Labor Board, have agreed to violate the law and furnish passes to persons not employed. The natural conclusion is that all persons concerned with the transportation industry recognize that the relationship of employer and employe continues even when employes are not actually working for the railroad or receiving wages.

The question now arises: Is there a distinction between

men furloughed or locked out and men on strike? These are, of course, different happenings but, is their effect any different upon the relationship of employer and employe. A reduction of forces and a lockout are often practically indistinguishable. The cause may be subject to dispute, but the effect is the same. A railroad may claim it is necessary to reduce forces because it cannot afford to furnish work at the wages demanded. To the men this appears to be a lockout, but it is called a reduction of forces and the men are technically on furlough. The distinction between a lockout and a strike is likewise often so finely drawn that it is difficult to argue that the status of the employe on strike is different from that of the employe locked out.

For example, in the shopmen's strike (reference may be made, if the facts are not regarded as within judicial knowledge, to the case entitled U. S. *vs.* Railway Employes' Department, et al., 283 Fed. 479, and 286 Fed. 228), the employes suspended work as a protest against wages, working conditions and practices of the railroads, and sought conference with railway managements for adjustment of these differences. After a month of the strike the President of the United States sought to bring the contending parties together and as a result of his efforts the employes agreed to return to work under the rules and working conditions against which they protested, but with the understanding that the railroads would abandon the condemned contract-out practice. But the railroad managements as a whole refused to restore the employes to their positions with seniority rights unimpaired. Eventually a large number of railroads did negotiate a settlement upon the understanding that seniority rights would not be impaired. In these controversies some railroad managements may have taken the position, for tactical advantage, that the strikers would not be regarded as old employes. On the other hand, it is equally clear that many railroads took the position that they were to be regarded as old employes.

It appears that where the question of the existence of a relationship of employer and employe is a matter for judicial determination the court may find an answer to the question in individual instances in the conduct of the parties. But as a broad question to be decided in interpreting a statute, the court must look rather to the legislative intention to determine how the words "employer and employe" have been used. The purpose of such legislation as the Clayton Act is to deal with industrial conditions and relations in a broad way and it would be destructive of the legislative intention to construe the words used in such a technical sense as to make it possible for private persons to defeat the effective operation of the Act. (See Duplex Printing Co. *vs.* Deering, 254 U. S. 443, particularly the dissenting opinion.) The force of this contention is doubled when one considers the provisions of the Transportation Act in connection with provisions of the Clayton Act.

The Transportation Act provides for the adjustment of disputes between carriers and employes in order to prevent interruptions of interstate commerce. The Act provides for the representation of employes through their organizations. If, when a dispute arises between a carrier and its employes resulting in the cessation of work, either through a lockout or through a strike, it should be held that the workers concerned can no longer be regarded as employes, then the provision for their representation through their organizations would be nullified. Thus the purpose of the Act would be defeated. The Transportation Act recognizes that those men who are trained to perform, under direction of management, the services necessary for the operation of the railroads are to be regarded as railway employes who may be organized in associations to promote their common interests, the membership of which cannot be arbitrarily diminished by the action of management in temporarily refusing to furnish work. In like manner the membership of these organizations is not diminished by the refusal of groups

of members to perform work under non-acceptable conditions. The organized employes must be regarded as "employes" whether all the members are actively engaged in rendering service or not. (See construction of word "employes" in the majority opinion in the Duplex case, *supra.*)

Conclusion as to Status of Employes.

One of the essentials in the administration of justice is that the courts shall deal with *facts* and with the practical considerations which affect the conduct of individuals whose interests are submitted to their judgment. It is quite well settled as a matter of fact, as indicated by authorities previously cited, that a strike is not a withdrawal from *employment* or a quitting of *employment;* but is intended to be, and is, a stoppage or suspension of *work* for the very purpose of improving the conditions of employment. As a practical consideration both parties to an industrial dispute of any magnitude regard the period of a strike as one of a *changed,* but not a *terminated,* relationship of employment. To assert that the relationship of employer and employe no longer exists when a strike or lockout occurs would be to assert that which is contrary to fact and to give the parties in contemplation of law an attitude toward each other which they themselves have not assumed. It is entirely appropriate to recognize that there is a *change* in the relationship, but quite inappropriate for a court to bring about a consequence in law which has not resulted in fact from the conduct of the parties.

The Court of Appeals goes outside the Record and makes Findings unsupported by Evidence.

The opinion of the Court of Appeals, denying to striking employes in the transportation industry the rights of striking employes in other industries, is based upon a finding of fact in regard to conditions in the transportation industry which

has no foundation in any evidence appearing in the Record and which is, in fact, a wholesale misstatement of conditions existing in this industry.

The opinion of the court includes the following startling statements which are contrary to facts which could be easily established:

> "From the foregoing considerations it is apparent that interstate railroads are bound hand and foot . . . . They cannot exert any sort of 'economic pressure' in any sort of 'industrial combat.' They are powerless to use the 'lockout' as a weapon against their employes."

Any consideration of the voluminous records of events preceding the shopmen's strike, which were not presented for the consideration of the court, would show that the above quoted statements deny the possibility of events which occurred repeatedly. They startle the informed person as would a statement by the court that the world is flat and immobile.

The decisions of the United States Railroad Labor Board (Vols. I, II and III) shows, for example:

The Western Maryland Railroad *locked out* its entire shop craft organization long before the shop craft strike. The Erie Railroad *locked out* its shopmen by contracting out its shops to private contractors who claimed to have all the powers of men engaged in private business. The whole purpose of this "contracting out" scandal, which was one of the chief causes of the shopmen's strike, was to exert *economic pressure* upon shop craft employes. The Buffalo and Susquehanna Railroad openly and publicly announced it would send away its shop work if its demands before the Labor Board were not met.

The New York Central and the Pennsylvania Railroads were each found by the Interstate Commerce Commission to have wasted at least $3,000,000 a year in sending away shop work to private shops; and the records show that at

the same time shop craft employes in large groups were laid off by these railroads. Was this not exerting *economic pressure* and to all intents and purposes using the *lockout* as a weapon? (Construction and Repair of Railway Equipment, 66 I. C. C. 694, 732.)

The court seems to have fallen into the error of regarding the *shop craft* employes as in the same situation as the *transportation* employes. As a matter of fact, the railroads have shown that they could exert heavy economic pressure upon the transportation men, but not to the extent to which pressure has been exerted against the *shop craft* employes. It has been the repeated contention of the railroads that the shopmen were not engaged in work essential to interstate transportation; and that the carriers therefore could lawfully contract out this work to private companies.

In combating the *shop craft* employes, railroads have reduced forces repeatedly without any excuse in diminishment of work, but solely as a means of exerting economic pressure. Over and over again the shop craft organizations have seen hundreds and thousands of men deprived of their jobs as a means of coercion. Yet the court holds that the railroads cannot exert any sort of economic pressure, and that they are powerless to use the lockout.

Chief Justice Marshall of the United States Supreme Court once said that "Congress could do many things but that it could not alter a fact." (See opinion of Justice McLean in Penn. *vs.* Bridge Co., 18 How. 421, 439.) It is respectfully submitted that the United States Circuit Court of Appeals cannot alter facts by judicial opinions, and that assertions not supported by any evidence should not be made the basis for expressions of judicial opinion upon which judgments are entered.

There is no record in the present case of any evidence (either oral or documentary) upon which could be based the findings of the court now complained of. If evidence *had been* presented it would have appeared that on August 2d (23 days before the contempt hearing) the railroad had

rejected the offer of the striking employes to return to work under the wages and rules established by the Labor Board, had rejected the settlement offer of the President of the United States, and was conducting a *lockout,* in defiance of the President. It would appear that the railroad was exerting considerable "economic pressure" for a "helplessly fettered opponent."

On the basis of unfortunate and quite unfounded assumptions the court makes the sweeping assertion that "plaintiffs in error were not engaged in a lawful strike." Apparently the conclusion of the court that the strike was unlawful is based upon its opinion that the statutes should be interpreted "to forbid an assault upon a helplessly fettered opponent," and upon the assumption that the railroads of the country are to be regarded in judicial contemplation as "helplessly fettered opponents" in combats with their employes. It is submitted that this assumption is made upon a record presenting no supporting evidence of its validity.

The opinion proceeds then to assert that the cause of the strike was the refusal of the employes to abide by a decision of the Labor Board, and, that therefore, the strike was "a controversy with, or a strike against, the Labor Board."

The court seems to be unaware that prior to the strike, the employes had protested against some 104 violations of the Transportation Act or decisions of the Board by 92 railroads. The records of the Labor Board and of the Supreme Court show that the Pennsylvania Railroad, a ring leader of the combined railroad executives, had repeatedly defied the Labor Board. The records of the Labor Board also show that the railroad managements were acting through a national association formulating and carrying out common policies against the interests of the employes. When the rulings of the Labor Board (for example, the ruling against the contracting out practice) were unsatisfactory to railroads, they refused to conform to them. Of all these statements there is ample evidence available. The

railway employes united in striking, not merely against a wage decision as the court mistakenly asserts, but against (1) a reduction of wages, (2) against changes in working rules, and, most important of all, (3) against the unlawful contracting out practices which were destroying their means of self defense. This united action of the employes, not in offense but in defense, against a united attack against them is stated by the court to be a strike against the Labor Board and "to be classed with the insurrection of the Boston policemen."

With all due respect, it is suggested that such statements in an opinion of this high court reflect grave discredit upon judicial processes. They are not based upon a record before the court but apparently upon information gathered from outside sources. They do not represent, therefore, properly formulated judicial opinions. They represent rather a gratuitous condemnation by the court of parties not before the court upon issues which have not been tried out in the court.

IV.

Trial by jury is an absolute right under the provisions of the Clayton Act.

It appears that the Court of Appeals agrees with the construction of the Clayton Act submitted by counsel for petitioners showing that its intent is to provide for trial by jury as a matter of right, in the instances specified. Inasmuch, however, as a contrary position was taken by opposing counsel it may be appropriate to refer briefly to the mandatory phrasing of the law.

The pertinent sections of the Clayton Act read in part as follows:

> "Sec. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States

> or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided. (38 Stat. L. 738.)"
>
> "Sec. 22. * * *
>
> "In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information."

Under the above provisions the first mandatory requirement is that if an injunctive order is disobeyed by the doing of an act which would be "also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed," the offender *shall* be proceeded against for contempt as provided in Section 22 of the Act. The present brief is not concerned merely with the State statute as that would involve only an issue local to this case. It is a matter of more general concern to see whether the acts here involved may be regarded as constituting criminal offenses under any statute of the United States.

We find the charge made in the bill of complaint that the defendants were acting "in violation of the Statutes of the United States prohibiting conspiracies in restraint of interstate commerce and for the purpose and intent of deliberately interrupting, interfering with and obstructing traffic upon the lines of Plaintiff carrier." (Record, p. 15.)

We find the restraining order recites that the plaintiff is entitled to an order "restraining the defendants herein and those affiliated, acting, co-operating, confederating, combining, conspiring, agreeing or arranging with them from doing the acts therein complained of and threatened to be committed," and also that the injuries to be prevented are "injuries to, obstructions of and interference with plaintiff's business as a common carrier in interstate commerce."

While naturally protesting against any such interpretation of the strike of the shop crafts (here defined to be a criminal conspiracy), it is apparent (1) that the complainant railroad sought relief upon the allegation that defendants were engaged in the criminal conspiracy in violation of the statutes of the United States; (2) that the court entered its restraining order against acts which the court determined should be prohibited as a part of said conspiracy; and (3) that the violations of that order of which the court found the defendants guilty must, therefore, have been regarded by the court as acts of conspirators which would have constituted criminal offenses under the statutes of the United States. Therefore, it is properly to be assumed that *under the rulings of the court* the provisions of the Clayton Act should have been applied.

The next question arising is, whether, under Section 22 of the Clayton Act, a demand having been made for a trial by jury, it was *necessary* or was a matter of discretion for the court to grant a trial by jury.

Is Trial by Jury Mandatory?

On first impression in reading Section 22, it might appear that the court has an option to grant a trial by jury, or to deny it because of the words "the court may impanel a jury." On careful reading, however, it will appear that the option of the court is either to "impanel a jury from the jurors then in attendance," or to "cause a sufficient number of jurors to be selected and summoned, as provided

by law," etc. But the provision is mandatory that at the time of the trial "a jury *shall* be selected and impaneled as upon a trial for misdemeanor." The provision is also mandatory that "such trial *shall* conform, as near as may be, to the practice in criminal cases," etc.

It is indeed a strange construction of the Clayton Act to urge that an act passed specifically for the purpose of insuring a trial by jury in certain classes of contempt cases shall be construed to leave the matter entirely within the discretion of the court, since it is obvious that the purpose in the passage of the Clayton Act was to prevent that which had been vigorously and widely attacked as an abuse of the powers of courts in conducting criminal prosecutions through equity procedure without allowing the accused the right of trial by jury, supposedly granted by the Constitution. (See dissenting opinions in Duplex Case, *supra*, and in Truax *vs.* Corrigan, 66 L. Ed. 132.)

It may be observed that the power of the courts to carry on criminal prosecutions without a jury through the means of contempt proceedings has been a matter of most serious dispute among those learned in the law, both of the bench and the bar, ever since this power was first asserted. The establishment of this power has been marked by such vigorous dissenting opinions that there can be little question, that if a different spirit had prevailed in the courts the so-called "law" of today whereby crimes are prosecuted and punished through equity procedure would not be the law. It may be appropriate to quote from two notable dissents. First, from the Supreme Court of Massachusetts:

> "It was not the intention of the Constitution that persons should be punished for violating general laws by proceedings in equity or by a court acting without a jury and subject to no limitations upon its power to fine and imprison except its own discretion."
>
> Carleton *vs.* Rugg, 145 Mass. 550.

Second, from the United States Circuit Court of Appeals where reference is made to the historic trial of William Penn:

> "With all their astuteness and eager desire to serve the Crown it never occurred to the judges in those days to enjoin the Quakers from meeting and Penn from preaching to them. This 'short-cut' would have gotten rid of the jury and placed Penn and his followers completely in the power of the judges; and instead of becoming the founder of a great city and commonwealth in a free republic, he would have languished in an English prison for contempt of court incurred by preaching to his congregation, for he avowed in court, 'that all the powers upon earth' could not divert or restrain him from that duty."
> Hopkins *vs.* Oxley Stave Co., 83 Fed. 912.

It may also be recollected that the decision of the United States Supreme Court in the Debs Case aroused as great a volume of protest and condemnation as perhaps any decision which has ever emanated from the court.

In view of this history we find the supreme legislative body of the nation enacting a law which in simple language provides that where a man is to be punished through contempt proceedings for a criminal act he shall be granted the right of trial by jury, which is guaranteed by the Constitution in all "criminal prosecutions."

If the court regards this legislative enactment as in excess of legislative power and as an unwarranted interference with the Judicial Department, such a holding would at least be a frank expression of the judicial conviction, but to suggest that the court should hold an Act, the whole purpose of which was to insure a trial by jury in certain circumstances *regardless* of the wishes of the presiding judge, to be an Act leaving this matter within the *discretion* of the judge is simply to ask the court to pervert the obvious meaning and purpose of the Act, to thus amend the Act and thereby indirectly to exercise the *legislative power* which has not been conferred upon the judiciary.

In this connection it may be pointed out that while the Supreme Court of the United States *has held* that equity jurisdiction is not ousted by the intrusion of criminal acts, it is also clear that the court *could have held* that equity jurisdiction could not be invoked for purposes of *punishment* when a civil wrong was perpetrated by criminal means, and that *punishment* (which is not civil redress) must be brought about through the processes of the criminal law.

It was one of the purposes of the Federal Constitution to prevent a revival of abuses that had arisen under the English judicial procedure. One of the complaints in the Declaration of Independence, which has been sometimes referred to as expressing the *spirit* of the Constitution, was a charge against the King "for depriving us in many cases of the benefits of trial by jury." It has been a sad commentary upon the development of American law, that, *with the aid of English precedents,* the benefits of trial by jury have been denied in a most important class of cases. It was clearly the purpose of the Clayton Act to restore trial by jury as a *right* in that class of cases. The issue of a right to trial by jury should be decided, not upon a torturing construction of the words of the Clayton Act, which are far from ambiguous, but upon meeting squarely the question: Is this provision of the Clayton Act constitutional?

V.

The Provision of the Clayton Act Granting Absolute Right to Trial by Jury is Constitutional.

There is a long line of opinions to the effect that the inferior Federal Courts are creatures of congressional legislation and that the legislative limitations placed upon their jurisdiction and its exercise are binding upon them. See 4 Fed. Statutes Annotated, 2nd Ed., page 846.

The general principle is stated in the Annotations as follows (p. 847):

> "The law is well settled that the courts of the United States inferior to the Supreme Court are mere creatures of Congress and possess no powers except those specifically granted to them by an Act of Congress and this limitation applies to all causes which under the Constitution Congress might have granted to the national courts jurisdiction to hear and determine."

In ex parte Robinson, 19 Wall. 505, 506, in the opinion of Mr. Justice Field, it is held:

> "The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power (to punish for contempts) but the power has been limited and defined by the Act of Congress of March 2, 1831. The act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court which derives its existence and powers from the Constitution, may perhaps be a matter of doubt, but that it applies to the circuit and district courts there can be no question. *These courts were created by Act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction.* The Act of 1831 is therefore, to them, the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases. * * * The law happily prescribes a punishment which the court can impose for contempt. The 17th Section of the Judiciary Code of 1789 declares that courts shall have power to punish contempts of their authority in any cause or hearing, before them by fine or imprisonment, at their discretion. *The enactment is a limitation upon the manner in which the power shall be exercised and must be held to be a negation of all other modes of punishment.*" (Italics ours.)

But it is asserted that the power to punish for contempt is "inherent" in the court and that a court being established,

the legislature cannot limit this inherent power to punish for contempt without invading with an exercise of legislative power, the exclusive domain of judicial power. An exhaustive brief might be written upon this broad question. The main line of argument would be of the following character: Since the establishment of inferior courts is left to the discretion of Congress and their jurisdiction may be limited by Act of Congress, it would seem that the creature could not exercise a power not conferred, but in fact expressly denied to it by its creator. To use an old metaphor—the stream can not rise higher than its source. This position has, however, been exhaustively discussed in various cases, with which the court is doubtless familiar. It is the purpose of the present brief merely to discuss the question from another viewpoint than that which has apparently received consideration heretofore, as indicative of the desirability of issuing the writ of certiorari, in order that this important issue may be determined.

Let it be assumed that Congress, having exercised its power to establish District Courts, has then provided that where a contempt case is presented which has the character of a criminal prosecution, the "court" which shall exercise the judicial power shall consist of *both judge and jury.* This is in fact the requirement of the Clayton Act. Does such a law operate to deprive the "court" of any power, or does it merely prescribe the manner in which the power shall be exercised, or, to put the matter more precisely, does not the law merely designate *what shall constitute a "court"* for the trial of contempt cases?

What Is a "Court"?

It seems to have been assumed in a great many of the opinions upon this question that a "court" consists of a *judge* and that judicial power can only be conferred upon and exercised by a *judge.* It is, however, well settled that a "court" is a tribunal—an incorporeal being.

"The words 'judge' and 'court' are frequently used as convertible terms, but strictly speaking this is a misuse of the terms, as a judge alone does not constitute a court. The term 'court' may be construed to include a jury as well as judges and a clerk, or as used in contra-distinction from a jury, according to the connection and object of its use."

8 Am. & Eng. Enc. of Law, 2nd Ed., page 22.

"This becomes entirely clear when we free our minds from the popular notion that the judge is the court. He is a constituent part of the organiaztion, but he is not the court. Nor is the court room the court, nor the jury room, nor the petit jury. The court is the totality of the constituent parts. It consists of the entire judicial organization for the trial of causes and it is immediately present whenever and wherever—from the opening to the adjournment of the sitting—these constituent parts are actually performing the functions devolving upon them by law."

In re Choate, 18 Civ. pro. rep. 186 (N. Y.).
People *vs.* Barrett, 18 *Ibid.* 230, affirmed in 121 N. Y. 678.

"The term court may include a judge and a jury," is a statement in 15 Corpus Juris, page 717, followed by one-half a column of citations, including the following:

"The word 'court' in the statutes is used in its generic sense and includes both judge and jury in a case where a jury is present."
People *vs.* Molineux, 168 N. Y. 264, 329.

On the same page of Corpus Juris appears, supported by citations:

"The words judge and court are frequently used as controvertible terms, but they are not strictly synonymous, and a judge alone does not necessarily constitute a court, for while the judge is an indispensable part, he is only a part of the court."

There is an Illinois case which makes pertinent application of the doctrine above outlined. In Mascall *vs.* Commissioners of the Drainage District, 122 Ill. 620, the question arose as to whether a land owner was entitled to a jury on an appeal to the county court. It was argued that the language of the act referred constantly to what the "court" should do, including such acts as fixing costs, and it was contended that a jury could not have been intended. The opinion of the Supreme Court, page 623, reads in part as follows:

> "The word *court* is, undoubtedly, often used in the sense of *judge*, and whenever the word *court* and the word *jury* are used in contradistinction to each other, it has that meaning, but in its general sense it means the tribunal by which justice is judicially administered. (Coke on Littleton 58a.) Thus, our Constitution provides: 'The judicial powers shall be vested in one *Supreme Court, circuit courts, county courts,*' etc. (Sec. 1, Art. 6.) *Circuit courts* shall have original jurisdiction of all causes in law and equity, etc. *County courts* shall be courts of record, and shall have original jurisdiction in all matters of probate, * * * and such other jurisdiction as may be provided for by law. (Secs. 12, 18, Art. 6.) One *judge* shall be elected for each of the circuits. (Sec. 13, Art. 6.) And there shall be elected in and for each county one county *judge*. (Sec. 18, Art. 6.) The inviolability of the right of trial by jury, 'as heretofore enjoyed,' is guaranteed. (Sec. 5, Art. 2.) But since all judicial power is invested in *courts*, it inevitably follows that a jury is an integral part of the court, in all cases where, at common law, there was the right of trial by jury."

It follows from the above reasoning that when the Constitution of the United States provided that the judicial power should be vested in one Supreme Court "and in such inferior courts as Congress may from time to time ordain and establish" (Art. 3, Sec. 1), there was no limitation fixing the exact portion of the judicial power which should be vested in the *judge* as a constituent part of the court. Cer-

tainly since the inferior Federal Courts were to be such courts as Congress might establish there was ample power conferred upon Congress to direct in what manner and with what constituent parts such inferior courts should be established and function. Therefore, how can it be contended that the Constitution *prohibits* Congress from establishing as the "court" for the trial of a certain class of cases a tribunal consisting of a judge and a jury?

Furthermore, the Congress was under express mandate to carry out the purpose expressed *in the same article* that "the trial of all crimes shall be by jury"—a purpose reiterated in the Sixth Amendment in the provision that, "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," etc.

Again, may it not be suggested that it is properly the function of the Legislative Department rather than the Judicial Department to determine what *are* "criminal prosecutions?" The Congress has passed a law providing that where a person is to be punished for an act which would constitute an offense against a federal or state statute, he shall be entitled to a trial by jury. In other words, *Congress has provided that the inferior court established for the exercise of judicial power in this class of cases shall consist of a judge and jury.* May it not be suggested that under these circumstances the attempt of a judge, who is only a part of the court, to exercise the judicial power conferred upon the *entire court* is a usurpation of authority not conferred upon him?

If Congress had established a District Court to consist of three judges of whom a majority must agree, in order to render judgment, would it not be an unlawful act for one judge to exercise alone any of the powers of the court? Is it not equally unlawful when an inferior court is constituted by act of Congress as consisting of a judge *and* jury, for the judge *alone* to attempt to exercise the power conferred upon that court?

There seems to be an all too prevalent delusion that a con-

tempt of court is the contempt of an *individual* who, to assert and maintain *his* authority, must have the right to punish disobedience of *his* orders. In fact a court is an incorporeal being. It may be that in the functioning of a court a judge alone issues an order, but it is not the order of the *judge* but the order of the *court*. Provision is made by the Congress which created and established that court that, in the event of certain offenses against the dignity of the *court* which are also offenses against the criminal law, the tribunal which shall convene as a court to try, and either to acquit or punish, the alleged offender shall consist of a judge *and* a jury.

It may be regarded as an effort to sanctify the individual rather than the institution to argue that the *man* who issues an order, alone shall judge and punish an alleged disobedience. It is submitted that in order to protect our institutions, which is the justification of the judicial power to hold laws unconstitutional, it is most important that emphasis should be laid upon the necessity of preserving the power of the *institution* rather than the power of the *individual* who occupies a public office.

The judicial power is reposed in the courts. For the exercise of that power the "court," in criminal prosecutions, has been established as a tribunal consisting of a judge and a jury. Thus the institution of trial by jury for persons accused of criminal acts is preserved as one of the most sacred institutions of democracy. For the judge of a court to attempt to exercise alone the power reposed jointly in the judge and a jury is to undermine this institution, the preservation of which is commonly regarded as essential by those who desire to maintain the American form of government.

Respectfully submitted,

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JACKSON H. RALSTON,
Of Counsel.

No. 708

FILED
DEC 20 1923
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

Petitioners,

vs.

THE UNITED STATES, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit.

COPY OF OPINION OF COURT OF APPEALS.

DONALD R. RICHBERG,
JOHN A. CADIGAN,
PETER B. CADIGAN,
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THE UNITED STATES, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully represent, that

(1) On July 20, 1922, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, respondent herein, filed its bill in equity in the District Court of the United States for the Western District of Wisconsin against certain individuals employed by the respondent Railway Company, officers and members of various labor organizations, alleging that the controversy arises under the Constitution and Laws of the United States, and particularly the Clayton Act, so-called, approved October 5, 1914, and charging the defendants named therein with having "entered into a conspiracy for the purpose of re-

straining and interfering with commence between the several states, carried on and to be carried on by the plaintiff, pursuant to the prosecution of its business and its duty as a common carrier of persons and property, both interstate and intrastate, and that as a part of said conspiracy the said defendants have entered upon a campaign and course of procedure aimed at the prevention of the repair of plaintiff's locomotives, cars and equipment used in the prosecution of its business, and to this end said defendants and each and all of them are adopting means unlawful in their character to prevent the plaintiff from employing men to work in its shops, at the cities of Superior, Hudson, Elroy, Spooner, Altoona, Eau Claire and Ashland in said district and elsewhere therein, where it carries on the general repair of its locomotives, cars and equipment; and in furtherance of such conspiracy the said defendants, and each of them, are adopting unlawful means to coerce, prevent and interfere with the lawful employment of employes,—".

Upon filing the bill of complaint a temporary restraining order issued out of the U. S. District Court for the Western District of Wisconsin, on July 20, 1922, directed against the defendants, and others, without notice, restraining the defendants, your petitioners herein, among others, from preventing or attempting to prevent any person by threats, intimidation, force and violence from accepting employment of the plaintiff railway company, and limited the practice of picketing so that but one representative of all the labor organizations could be maintained at each point of ingress and egress to and from its shops and grounds. The preliminary restraining order was continued in effect until August 18, 1922, when after a hearing on issue joined by the defendants, a temporary injunction issued out of the said court.

(2) The original suit in equity was dismissed by the solicitors for the plaintiff Railway Company on October 31, 1922, without prejudice to any contempt proceedings arising out of the violation of the temporary restraining order or injunction.

(3) On August 18, 1922, the plaintiff Railway Company procured a rule to show cause, citing the petitioners herein as defendants, why they should not be committed for contempt and violation of the preliminary restraining order issued July 20, 1922. Affidavits were filed supporting the motion alleging that certain of the affiants, employees of the plaintiff, were accosted by the defendants and that intimidating remarks were addressed to them by said defendants.

At the trial thereof the defendants, your petitioners herein, upon filing their separate answers, moved the court for a jury trial on the ground that the case was fairly covered by Section 22 of the Clayton Act. The motion for a jury trial was denied by the court.

Thereupon said defendants perfected an appeal from said order or decree to the Circuit Court of Appeals for the Seventh Circuit. Said cause was entered and docketed in said Circuit Court of Appeals, entitled *Sam Michaelson et al., Plaintiffs in Error,* v. *The United States ex rel. Chicago, St. Paul, Minneapolis and Omaha Railway Company, Defendants in Error,* as cause No. 3221.

The errors assigned and filed in said appeal were as follows:

No. I. That the District Court erred in denying the motion of defendants', your petitioners herein, demanding a jury trial, as provided by law.

No. II. That the evidence was wholly insufficient to sustain the judgment, and that the said District Court had no jurisdiction to impose sentence.

No. III. That the District Court erred in imposing sentence on the defendants', your petitioners herein, for the reason that such sentence was without warrant in law.

The said Circuit Court of Appeals thereafter granted permission to counsel for the Railway Employes' Department to file a separate brief; that in such separate brief a special effort was made by said counsel to induce the court to hold that strikers were still to be regarded as "employees" and within the protection afforded by the Clayton Act to "employees".

Afterwards, to wit, on the 2d day of May, 1923, the case came on to be heard in the Circuit Court of Appeals before the Honorable Francis E. Baker, the Honorable Evan A. Evans, and the Honorable George T. Page, and on the 11th day of July, 1923, a decree or order was entered in said cause by the Circuit Court of Appeals of the Seventh Circuit affirming the judgment of the U. S. District Court for the Western District of Wisconsin.

The said Circuit Court of Appeals held that the motion demanding jury trial, in accordance with Section 22 of the Clayton Act, was properly denied by the District Court, on the following grounds:

(1) That the defendants, your petitioners herein, did not come within the purview of the Clayton Act, which extends its protection only to an "employee" and (or) "employees", because any strike against an interstate railroad or railroads is illegal; that, therefore, the defendants, your petitioners herein, were in the position not of employees on strike, but of strangers.

(2) That, even if the defendants, your petitioners herein, were "employees" within the meaning of the Clayton Act, nevertheless the motion demanding jury trial was properly denied by the District Court, because said Section 22 of the Clayton Act is unconstitutional, as being in violation of the provisions of Article III, Sections 1 and 2 of the Constitution of the United States.

Thereafter your petitioners filed a petition for rehearing in said cause, which was subsequently denied.

(4) Your petitioners are advised by counsel that said judgment of the Circuit Court of Appeals is final, and is erroneous, and that this Honorable Court should require the case to be certified to it for its review and determination under the Act of Congress permitting causes made final in the Circuit Court of Appeals to be certified for revision.

Your petitioners are further advised by counsel that their motion in the District Court, demanding a jury trial, was improperly and erroneously denied by said District Court, and that the criminal contempt proceedings brought against them, and heard and determined by the District Court without a jury, although a jury had been demanded, were erroneous and contrary to law. That the said Section 22 of the Clayton Act providing for a jury trial in contempt cases, is constitutional and that the decision of the Circuit Court of Appeals declaring that part of that Act of Congress unconstitutional is erronoeus.

The reasons we have for applying for this writ of *certiorari* are:

a. The *great public importance* of the questions involved:

1. The decision of the Circuit Court of Appeals declares invalid a solemn enactment of the Congress of the United States, duly approved by the President. If this honorable Court does not grant the petitioners' prayers for a write of *certiorari*, the result is that a court, inferior under the Constitution, and not co-ordinate in power with Congress and the Chief Executive, has set to naught their deliberate enactment; such a result would tend to weaken public confidence in the courts, and to disturb the delicate balance between the branches of the government.

2. This cause calls for an authoritative interpretation of Article III, Sections 1 and 2 of the Constitution of the United States, and is a case of first impression before this honorable Court.
3. Section 22 of the Clayton Act (the validity of which is the principal question involved in this cause) has its chief importance in proceedings growing out of industrial disputes. Interest in an authoritative ruling by this honorable Court on its constitutionality is therefore by no means confined to these present petitioners, but extends to the millions of wage workers who now are or are likely later to become involved in an industrial dispute.
4. The same question has been raised in many other inferior courts of the United States. *In re Atchison,* 184 Fed. 604 (S. D. Fla. 1922); See *Canoe Creek Coal Co.* v. *Christianson,* 281 Fed. 559 (W. D. Ky. 1922).

b. A decision by this honorable Court will answer the need for *uniformity* and *certainty* so essential to the guidance of the numerous inferior Federal courts before whom the question is often raised.

Wherefore your petitioners respectfully pray that a writ of certiorari be issued under the seal of the court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, commanding the court to certify and send to this court on a day to be designated a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Act of Congress approved March 3, 1891, establishing the Circuit Court of Appeals and defining and regulating their jurisdiction; and that the said judgment of the Circuit Court of Appeals be reversed by this Honorable Court, and for such further relief as may seem proper.

And your petitioners will ever pray.

Sam Michaelson, Dan Cullen, Fred Henstra, Ole North, Art Daniels, Joe Ritchie, Matt Anderson, John Hagen, Arley Martin and Clarence Michaelson.

By DONALD R. RICHBERG,
JOHN A. CADIGAN,
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Their Attorneys.

DONALD R. RICHBERG,
JACKSON H. RALSTON,
Counsel for Petitioners.

CERTIFICATE.

I, DONALD R. RICHBERG, of Chicago, Illinois, an attorney regularly admitted to practice in the United States Spureme Court, do certify that I am the duly appointed counsel for the above petitioners, and that I am acquainted with the proceeding in said cause, and that the facts therein stated are true to the best of my knowledge and belief.

DONALD R. RICHBERG,

Chicago, December .., 1923.

APPENDIX.

Opinion of the Court.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 3221. October Term, 1922, April Session, 1923.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RICHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, ex rel. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY,
Defendant in Error.

} Error to the District Court of the United States for the Western District of Wisconsin.

Before Baker, Evans and Page, *Circuit Judges.*

Baker, *Circuit Judge*, delivered the opinion of the Court:

This writ of error brings up for review judgments against plaintiffs in error for criminal contempt.

On July 1, 1922, these men went out on the so-called strike of the shop-crafts unions. Shortly thereafter the trial court, on the bill and motion of the railroad company, relator herein, entered a temporary restraining order which was found in this proceeding to have been violated.

I. As the case is here on writ of error the challenge

of the sufficiency of the evidence goes only to the question whether a *prima facie* case of violation was made. *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324. We have examined the evidence and find an abundant showing against plaintiffs in error to support the finding of intimidation of shop workmen and of picketing by groups in a manner condemned in recent cases. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Truax* v. *Corrigan*, 257 U. S. 312.

II. After this contempt case had been brought here, the railroad company dismissed its bill for injunction. This did not have the effect of canceling these judgments which had already been entered.

III. Did the court err in overruling the demand of plaintiffs in error for a jury trial?

Section 20 of the Clayton Act (Comp. St. 1918, Sec. 1243 d) speaks of the respective rights of "employers and employees" in any injunction case "involving or growing out of a dispute concerning terms or conditions of employment."

Under Section 21 (Comp. St. 1918, Sec. 1245 a), if an injunctive order is violated by the doing of an act which would be "also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed," the offender shall be proceeded against for contempt as provided in Section 22 (Comp. St. 1918, Sec. 1245 b), namely: "Such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be,

to the practice in criminal cases prosecuted by indictment or upon information."

Counsel seem to be agreed, and we think properly so, that plaintiffs in error, in order to have the benefit of the Clayton Act, must have been "employees" within the meaning of the Act from the time of the so-called strike down till after the violations.

They also do not question that the violations would constitute criminal offenses under statutes of the United States and of Wisconsin.

But they do not agree upon the construction of Section 22. Counsel for defendant in error point to the permissive word "may" in the phrases "the trial may be by a jury" and "the court may impanel a jury." For plaintiffs in error it is argued that the permissive word "may" is to be construed as mandatory wherever that course is necessary in order to preserve the clear meaning of other words and phrases in the context (36 Cyc. p. 1160), and that the word "demand" (to claim as a matter of right) and the phrases "a jury shall be impaneled" and "such trial shall conform to the practice in criminal cases" require that permission be taken as duty. Obviously there is an ambiguity, an inconsistency, an opposition of words. We think the ambiguity can be cleared by a reference to the history of the times preceding the Clayton Act and a consideration of the asserted evil to be cured by the proposed legislation. For many years political and social writers and speakers had been denouncing the interference of judges in the combats between labor and capital and had been insisting that the question of unlawful conduct in such combats should not be decided except by jury trial. A political party gave a pledge to abolish "government by injunction," meaning by that quoted phrase the chancellor's use of punitive and coercive means to enforce the chancellor's decree,

which, after full hearing and subject to the right of appeal for the correction of errors, adjudged that proven trespasses upon property should cease. And the bill, introduced by Senator Clayton, was drafted by the labor unions. As drafted the bill did not contain the ambiguity we now find. In the course of the bill's progress to enactment a word was inserted which may be given a permissive or a mandatory sense. Rather than attribute to Congress an intent to issue a "*brutum fulmen,*" it should be agreed that the intent was to give to the special class in special cases the absolute right to trial by jury.

Nevertheless plaintiffs in error were not entitled to a trial by jury.

(1) If their going out on the so-called shop-crafts strike ended the relation of employer and employee between them and the railroad company, they would not be within the special class selected by the Clayton Act.

In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiffs in error that a "strike" does not of itself terminate the relation of employer and employee. A controversy arises, and the employees, then at work, say to their employer: "We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working rules, and ready to return to work the moment we can agree." If, by reason of a failure to agree, the employees stop their work, a "strike" is on. They are no longer working and receiving wages; but, in the absence of any action other than above indicated looking to a termination of the relationship, they are entitled to rank as "employees" with the adjective "striking" defining their im-

mediate status. And a "lockout" by the employer is the exact counterpart of the "strike" by the employees. In the industrial combat the two sides must have equal and reciprocal rights in exerting economic pressure. 5 Illinois Law Review 453; 31 Yale Journal 321; *Iron Moulders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Gasaway* v. *Borderland Coal Corporation*, 278 Fed. 56; *Uden* v. *Schaeffer*, 188 Pac. 395.

Among the cases in the Supreme Court dealing with the respective rights of capital and labor in economic controversies, those arising in private and local industries predominate. *Loewe* v. *Lawlor*, 208 U. S. 274; *Paine Lumber Co.* v. *Neal*, 244 U. S. 459; *Hitchman Coke & Coal Co.* v. *Mitchell*, 245 U. S. 229; *Duplex Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Truax* v. *Corrigan*, 257 U. S. 312. In the American Foundries case, the strike involved a steel plant in Granite City, Illinois. In the Truax case, the center of the industrial storm was a restaurant on "Main Street" in Bisbee, Arizona. In no case of which we have cognizance has the point been made that the rules for economic combats in private and local industries, which society tolerates, have no just application to our present-day system of railroad transportation. When common carriers were few and small and relatively local, when the interference with the non-combatants was no greater than in a private industry, and when the common carrier was unfettered as a combatant, there could be no greater objection to a strike against a common carrier than to one against a restaurant. In all such cases the non-combatants will have to wait until advancing civilization shall have put the strike in limbo with the duel. At the time of the Pullman strike (*in re Debs*, 158 U. S. 564), though the disturbance in and about Chicago was very considerable, the railroad unions

did not have their hands at the throat of the Nation, and the railroads as combatants had not become completely fettered. Today the concerted action of railroad unions in stopping transportation might destroy our industries and imperil the lives of our people. But it is not upon a consideration of public distress or public necessity that we base a legal distinction exempting interstate railroads from the "strikes" that are permissible in private industry. To be a legal distinction (and not a mere suggestion of further Congressional action) it must be based on the interpretation and application of the law as it stands today.

(a) Interstate railroads are under control of the Interstate Commerce Commission with respect to the nature, quality and amount of service to be given to passengers, to shippers, and to other carriers. Comp. St. 1918, Secs. 8563-8583; Comp. St. 1923, Sec. 8563, Subd. 10-21. This service is the only commodity that the railroads have, from the sale of which they can derive an income. A private employer, free to fight and engage in one of these so-called "industrial combats," might consider it wise to sign a treaty of peace giving his employees higher wages, because legally he could cheapen his commodity to the same degree and thereby keep his business alive. Interstate railroads have no such control of their commodity.

(b) Or the private employer, being legally free to do so, might think it best to make up his increased cost of production by increasing the price of his commodity. Interstate railroads have no such control of their prices. The Interstate Commerce Commission on its own initiative has power to classify and regulate the businses, and to fix maximum or minimum, or maximum and minimum, or the particular rates, fares or charges for all the business. Comp. St. 1923, Sec. 8583 (1).

(c) Or the private employer, being legally free to do so, might conclude to shut up shop, wind up his business, and quit. Interstate railroads have no legal right to quit. Most of them have State charters for fragmentary parts of their systems. Most of them have parts that were welded together by concurrent permissive legislation of several States. It is not merely the consequences of violating or failing to live up to the requirements of the State charters that are to be considered; all interstate railroads are now forbidden to "abandon all or any portion of a line of railroad or the operation thereof" without the approval and certified consent of the Commission. If they should attempt to quit without such consent, the Attorney General, or the Commission, or a State Commission, or any party in interest, is authorized to go to court and get an injunction on showing an attempted or intended abandonment of operation. Title IV of the Transportation Act, 1920; Comp. St. 1923, Sec. 8563, (18)-(20).

From the foregoing considerations it is apparent that interstate railroads are bound hand and foot. They have no choice as to what they will sell or for how much. They dare not quit. They are forbidden by law to quit. They can not exert any sort of "economic pressure" in any sort of "industrial combat." They are powerless to use the "lockout" as a weapon against their employees.* Turning back now to the definition of a "strike," we see that, in an industrial combat wherein the rights of the combatants are equal and reciprocal, the strike was only tolerated as a weapon on one side because the other side was armed with an equivalent weapon. Mutual freedom

* The fact that the Commission could not constitutionally deny an interstate railroad the right to abandon its line or a part thereof if there was no reasonable prospect of profitable operation in the future (*Bullock* v. *R. R. Comm. of Florida*, 254 U. S. 513, 521), does not militate against the position that an interstate railroad is forbidden by law to use the "lockout."

is the vitals of "collective bargaining" or any bargaining. In our judgment the very principles on which the strike was originally found to be lawful now require that the Interstate Commerce Act and Title IV of the Transportation Act be interpreted and applied to forbid an assault upon a helplessly fettered opponent and to forbid the calling of such an act a combat.

It follows that plaintiffs in error were not engaged in a lawful strike. Their acts toward the railroad company were necessarily the same as those of strangers. Consequently they were not qualified to demand a jury trial under the Clayton Act.

This does not mean that, because employees can not conduct lawful strikes against interstate railroads under the law as it now stands, they have become enslaved or in any way bound to work. *Arthur* v. *Oakes*, 63 Fed. 320. It merely means that when they refuse to work, either singly or collectively, they sever themselves from their jobs. They are then at perfect liberty to seek new employment.

(2) Another ground supports the conclusion that plaintiffs in error, on and after July 1, 1922, were not employees carrying on a controversy over wages and working conditions with the railroad company as their employer, and therefore were not entitled to invoke the benefit of the jury provision in the Clayton Act.

In its bill of complaint the railroad company set forth the substance of Title III of the Transportation Act of 1920. Comp. St. 1923, Sec. 10071¼, subd. ee-jjj. That part of the Act creates the Railroad Labor Board and treats of the duties of the Board in reference to wage and other disputes between interstate railroads and their employees. On May 25, 1922, the Board rendered its decision fixing wages for employees in the shop crafts, to become effective on July 1, 1922. The railroad company

accepted said decision, and intended and attempted to comply therewith; but plaintiffs in error and the other employees in the shop crafts refused to abide by the decision, and in defiance of the Board abandoned the service of the railroad company.

Although beyond a moral sanction there is no penalty for violating the Board's decision except the Board's publication of its opinion that its decision is being violated (Title III of the Act, Sec. 313, Comp. St. 1923, Sec. 10071¼ iii; *Pennsylvania Rld. Co.* v. *United States Railroad Labor Board,* U. S. , Feb. 19, 1923), that part of the Act declares a public policy which should be accepted and made effective in civil actions irrespective of the character and amount of punishment prescribed for the offenses viewed as crimes or misdemeanors.

In our judgment, therefore, the so-called strike of the shop-crafts unions was a controversy with, or a strike against, the Labor Board as an instrumentality of our National government, and is to be classed with the insurrection of the Boston policemen.

Here, again, there is neither enslavement nor legal compulsion to work; the men are at liberty to quit, singly or collectively, but must recognize that they no longer are employees of their former employer.

(3) Accepting for the sake of the argument the contention of plaintiffs in error that they were entitled to invoke the jury provision of the Clayton Act, nevertheless their demand for a trial by jury was rightly denied because that part of the Act is unconstitutional.

Art. III, Sec. 1: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Article III, Sec. 2, Par. 1: "The judicial power shall extend to all cases in law and equity arising under this

Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Article III, Sec. 2, Par. 2, after defining the original jurisdiction of the Supreme Court, proceeds: "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The original jurisdiction of the Supreme Court comes directly from the Constitution and can not be enlarged or diminished by Congress. The appellate jurisdiction of the Supreme Court can be limited as to subject matter and regulated as to procedure. Appellate jurisdiction assumes the existence of trial courts. And Congress in ordaining trial courts and other courts inferior to the Supreme Court can limit their jurisdiction as to subject matter and regulate their procedure. Viewing the inferior courts, and also the Supreme Court as an appellate tribunal, we see that Congress, the agency to exercise the legislative power of the United States, can, as a potter, shape the vessel of jurisdiction, the capacity to receive; but, the vessel having been made, the judicial power of the United States is poured into the vessel, large or small, not by Congress, but by the Constitution.

Some terms in the Constitution are, and were meant to be relative. For example, "due process of law" and "liberty" in the Fifth and Fourteenth Amendments were not intended to limit the police power forever to those matters which it had laid hold upon when those amendments were adopted. Other terms are, and were meant to be, absolute. They cover now exactly the same ground they did when adopted, without possibility of enlargement or diminution except by amendment. For example: "Habeas corpus" in Article I, Sec. 9; "trial by jury" in Article III, Sec. 2, Par. 3, and in the Sixth and Seventh Amendments; "cases in law," "cases in equity," "crim-

inal prosecutions," "indictment of a grand jury," "suits at common law," in Article III, Sec. 2, Par. 1, and in the Fifth, Sixth and Seventh Amendments.

Congress may limit the jurisdiction of an inferior court to hearing criminal cases, or to designated kinds of criminal cases; but Congress can not constitutionally deprive the parties in such a court of the right of trial by jury. The same is true of trials of "cases in law." And the jury in such a civil or criminal court must comprise twelve jurors and their verdict must be unanimous. Similarly Congress may limit the jurisdiction of an inferior court to hearing "cases in equity," or to designated kinds of equity cases; but Congress can not constitutionally deprive the parties in an equity court of the right of trial by the chancellor. *Martin* v. *Hunter's Lessees,* 1 Wheat. 331; *In re Atchison,* 284 Fed. 604.

A proceeding called a contempt proceeding, perhaps not very happily, is the means of executing the decree in equity. A plaintiff has been found by a decree in equity to be entitled to enjoy certain property rights without being further disturbed by the defendant. But the defendant persists. To enforce the decree the court may try the deterrent effect of fine, or imprisonment for a definite period, or may give the plaintiff civil relief by keeping the disturber away until the plaintiff is in the secure enjoyment of his property rights. Either way, the vindication or enforcement of the decree must be held to be an inherent power of the equity court, a power within the power to render the decree. *In re Debs,* 158 U. S. 564, at pp. 593-6.

The judgments are AFFIRMED.

A true Copy:
Teste:

.....

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

JAN 3 1924
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

No. 708.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

Petitioners,

vs.

THE UNITED STATES, EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR A WRIT OF CERTIORARI.

RICHARD L. KENNEDY,
St. Paul, Minnesota,
LYMAN T. POWELL,
and
JOHN S. SPROWLS,
Superior, Wisconsin,
Counsel for Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

No. 708.

SAM MICHAELSON, DAN CULLEN, FRED HENSTRA, OLE NORTH, ART DANIELS, JOE RITCHIE, MATT ANDERSON, JOHN HAGEN, ARLEY MARTIN and CLARENCE MICHAELSON,

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THE UNITED STATES, EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,

Respondent.

BRIEF OF RESPONDENT OPPOSING APPLICATION FOR A WRIT OF CERTIORARI.

While the granting or the denial of a petition for a writ of certiorari appears to be a matter within the discretion of this court, there are certain statements made in the brief in support of the petition for a writ of certiorari which should not go unchallenged.

It will be observed that the brief, in support of the petition for a writ of certiorari, consists of:

I. A denial that inherent power vests in the Federal Courts to punish for contempt, without a jury; and

II. An assertion that the status of the petitioners was that of employees, regardless of the fact that since July 1, 1922, they had been out on a strike.

I.

That inherent power vests in the Federal Courts to punish for contempt, without a jury, has been recognized by a long line of decisions of this court.

United States v. Hudson and Goodwin, 11 U. S. 32;

Martin v. Hunter, 14 U. S. 304, 328;

Anderson v. Dunn, 19 U. S. 204, 227;

Ex parte Robinson, 86 U. S. 505;

Ex parte Terry, 128 U. S. 289;

Eilenbecker v. Plymouth County, 134 U. S. 31, 36;

Interstate Commerce Commission v. Brimson, 154 U. S. 447, 489;

In re Debs, 158 U. S. 564, 595;

Tinsley v. Anderson, 171 U. S. 101, 108;

Bessette v. W. B. Conkey Co., 194 U. S. 324, 337;

Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450;

Gompers v. U. S., 233 U. S. 604, 610.

Innumerable decisions of the State Courts and of the Federal Courts, other than this court, are to the same effect.

II.

Were the petitioners "employes" within the meaning of the Clayton Act?

The petitioners were members of an organization which declared a strike, effective on July 1, 1922. The activities of this organization, following that date, and its methods of conducting this strike, are summarized in U. S. v. Railway Employees Department of the American Federation of Labor, et al., 290 Federal 978. From this decision it appears that the statement, in that portion of the brief in support of petition for a writ of certiorari, (page 15), entitled 'Conclusion as to status of Employees" that a strike is "a stoppage or suspension of *work* for the very purpose of improving the conditions of employment," does not accurately describe the methods of the organization of which the petitioners were members.

A claim that the relationship of employer and employee continued to exist under the circumstances described in said decision startles "the in-

formed person as would a statement by the court that the world is flat and immobile."

Respectfully submitted,

RICHARD L. KENNEDY,
St. Paul, Minnesota,
LYMAN T. POWELL,
and
JOHN S. SPROWLS,
Superior, Wisconsin,
Counsel for Respondent.

MICHAELSON ET AL. *v.* UNITED STATES EX REL. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SANDEFUR *v.* CANOE CREEK COAL COMPANY.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Nos. 246 and 232. Argued April 9, 10, 1924.—Decided October 20, 1924.

1. The Clayton Act, October 15, 1914, §§ 21, 22, c. 323, 38 Stat. 738, provides that any person who shall wilfully disobey any writ, etc., of any District Court of the United States or court of the District of Columbia, by doing any act or thing therein or thereby forbidden, if of such character as to constitute also a criminal offense under any statute of the United States or law of the State in which committed, shall be proceeded against as in the statute

provided; that in all such cases the trial may be by the court, or, upon demand of the accused, by a jury, and shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information, the accused, upon conviction, to be punished by fine or imprisonment, or both, the fine to be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or, where several are so damaged, be apportioned among them as the court may direct. Concerning this, *Held*:

(*a*) That the proceeding contemplated is for the prosecution of criminal contempts exclusively, the discretion given the court regarding the payment of fine to private complainants being incidental and subordinate to the dominating purpose of the proceeding, which is to vindicate the authority of the court and punish the act of disobedience as a public wrong. P. 64.

(*b*) A proceeding for criminal contempt, committed by disobedience of an injunction, unlike the proceeding for civil contempt, is between the public and the defendant, is an independent proceeding at law, and no part of the original cause. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418. *Id.*

(*c*) The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power to punish for contempt, which is inherent in all courts and essential to the administration of justice. P. 65.

(*d*) In so far as concerns the lower federal courts, although the attributes which inhere in this power and are inseparable from it can neither be abrogated nor rendered practically inoperative, the power, within limits not precisely defined, may be regulated by Congress. P. 66.

(*e*) The above statutory provision for a jury trial, applicable only where the act or thing complained of is also a crime in the ordinary sense, and not interfering with the power to deal summarily with contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor purporting to extend to cases of failure or refusal to comply with decrees requiring affirmative action, does not invade the powers of the courts as intended by the Constitution, and is within the regulatory power of Congress. *Id.*

2. Section 20 of the Clayton Act, concerning the granting of injunctions "in any case between an employer and employees" involving or growing out of a dispute concerning terms or conditions of employment, includes such cases in which the employers are railroad companies. P. 68.

3. Railroad employees who, in a dispute over wages, go out on strike in defiance of a decision of the Railroad Labor Board, and, in furtherance of the strike, conspire together and commit unlawful acts in restraint of the railroad's interstate commerce, remain "employees" of the railroad in the sense of § 20 of the Clayton Act. P. 67.
4. In such a case, existence of the status of employment at the time when acts constituting a contempt are committed is not necessary in order to bring into operation the provision for jury trial made by § 22. P. 69.
5. Abusive language, assembling in numbers, picketing, and other acts by strikers, for the purpose of intimidating and preventing men desirous of securing employment with a railway company, *held prima facie* violations of a penal statute of Wisconsin, (R. S., 1921, § 4466c). *Id.*
6. Section 22 of the Clayton Act, although reading that the trial "may" be by the court, or, upon demand of the accused, by jury, is to be construed, in the light of its history and purpose, as giving the accused the absolute right of trial by jury. P. 70.

291 Fed. 940 (No. 246), reversed.

THE first case was a certiorari to review a judgment of the Circuit Court of Appeals affirming a judgment of the District Court which adjudged the petitioners guilty of contempt, after a trial in which their request for a jury was denied.

The second case presents a question certified by the Circuit Court of Appeals, which is set forth in the opinion, *post*, p. 70.

Mr. Donald R. Richberg and *Mr. Jackson H. Ralston*, with whom *Mr. John A. Cadigan* and *Mr. Peter B. Cadigan* were on the brief, for petitioners in No. 246.

I. This is a case of criminal contempt. If it were a case of "civil contempt," the proceedings, being interlocutory, would have terminated with the conclusion of the original case, which was dismissed on motion of complainant. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418.

The United States is named as complainant in the present case by order of court.

Irrespective of the guilt of the defendants, it appears clear that the lower court proceeded to punish them for criminal offenses and to impose fines, not for the benefit of the complainant, but, in the language of this Court in the case last cited, "the sentence is punitive to vindicate the authority of the court." See *Stearns* v. *Marr*, 181 N. Y. 463; *In re Nevitt*, 117 Fed. 448.

The judgments in this case were plainly not remedial nor compensatory.

A brief consideration of the nature of crimes in general, as distinguished from civil legal wrongs, will make abundantly clear that the acts for which petitioners were ordered punished constitute criminal, not civil contempt. *Reg.* v. *Paget*, 3 F. & F. 29, note; Austin, Juris., § 17; 1 Bishop, Crim. Law, § 32; Beale, 21 Harv. Law Rev. 1; *Ex parte Kearney*, 7 Wheat. 38; *New Orleans* v. *Steamship Co.*, 20 Wall. 387; *In re Shull*, 221 Mo. 623.

That contempt of court is a criminal offense is also recognized in innumerable decisions of the inferior federal courts. See 5 Fed. Stat. Ann., 2d ed., 1033, note; *Fischer* v. *Hayes*, 6 Fed. 63; *Castner* v. *Pocahontas Co.*, 117 Fed. 184; *In re Ellerbe*, 13 Fed. 530; *Bullock Co.* v. *Westinghouse Co.*, 129 Fed. 105; *Anargyros* v. *Anargyros & Co.*, 191 Fed. 208; *United States* v. *Jacobi*, 26 Fed. Cas. No. 15,460.

It has been repeatedly said by the Attorneys General of the United States that "contempt of court is an offense against the United States" within the President's pardoning power. 3 Ops. Atty. Gen. 622; 4 *id.* 458; 5 *id.* 579; 19 *id.* 476.

The court below confused: (1) the inherent power of an equity court to furnish a remedy to the complainant and to enforce its decree for that purpose, and (2) the distinct (and not inherent) power of the court to punish for a criminal offense. There is no "inherent power" in a chancellor to punish criminal offenders. It is necessary

to have clearly in mind the important distinction between a proceeding in civil contempt, which is a part of an equity proceeding, and a proceeding in criminal contempt, which is an action at law—a prosecution by the United States for a criminal offense.

II. Congress has power to make a trial by jury mandatory.

The inferior federal courts are creatures of congressional legislation, and legislative limitations upon their jurisdiction and its exercise are valid. The first Congress, in which sat many of the framers of the Constitution and other contemporaries of the Convention, made provision as to the exercise of the power of punishment for contempt. Judiciary Act, 1789, § 17. The abuses of Judge Peck and the failure by one vote to impeach him (see Peck's Trial) resulted in a congressional amendment to § 17 (Act of 1831), whereby Congress limited the power of the inferior federal courts to punish for contempt. This limitation was never declared unconstitutional, although it has been before this Court on more than one occasion. *Ex parte Robinson*, 19 Wall. 505; *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402; *In re Neagle*, 135 U. S. 1.

In *Ex parte Robinson, supra*, a case which is later than *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, referring to this very limitation of § 17, effected by the Act of 1831, this Court, per Mr. Justice Field, held: "The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power [to punish for contempts] . . . But the power has been limited and defined by the act of Congress of March 2, 1831."

No stronger expression of the principle here contended for can be found than is embodied in a decision by Mr. Chief Justice Marshall, *Ex parte Bollman*, 4 Cr. 93. See Peck's Trial, p. 294; *United States* v. *Hudson*, 7 Cr. 32, 33;

Ex parte Cabrera, 1 Wash. C. C. 232; *Turner* v. *Bank of North America*, 4 Dall. 8; *Livingston* v. *Van Ingen*, 1 Paine, 45; *Cary* v. *Curtis*, 3 How. 236; *Sheldon* v. *Sill*, 8 How. 441; *Holmes* v. *Goldsmith*, 147 U S. 150.

That § 1 of Art. III of the Constitution does not mean that Congress, having established inferior courts, is powerless to limit their jurisdiction, is very clearly shown by the provisions of the first Judiciary Act and the history of its adoption. Warren, New Light on the History of the Federal Judiciary Act of 1789, 37 Harv. Law Rev. 49. And see *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265; 1 Works of James Monroe, Monroe to Madison, Aug. 12, 1789.

The lack of authority to issue a writ of mandamus in the absence of express statutory grant of power is well recognized. *In re Massachusetts*, 197 U. S. 482; *Knapp* v. *Lake Shore & M. S. Ry. Co.*, 197 U. S. 536.

The authority of the federal courts to issue writs of *habeas corpus* is derived from the acts of Congress, first, limiting the power, and later, by successive legislative enactments broadening the power.

In England and in most Colonial admiralty courts at the time of the adoption of the Constitution and for many years prior, admiralty jurisdiction did not extend to seizure under the laws of impost, navigation or trade, and accordingly such cases were tried in a common law court by a jury. The Judiciary Act of 1789, however, gave to the District Courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including seizures under laws of impost, navigation or trade." Thus, the first Congress, having established an inferior court did not permit parties to exercise the right recognized for many years before the Constitution and at the time of its adoption of trial by jury in a certain class of cases. This portion of the Judiciary Act which has been before the Court on many occasions has never been held unconstitutional.

There is no inherent judicial power in a court of equity to punish criminal contempts. [Citing articles by F. Solly-Flood, Q. C. in Vol 3 N. S. Royal Historical Society, (1886), and by John Charles Fox, 24 Law Quar. Rev. (1908), and reviewing numerous cases and authorities there cited, and adding others, to show that, from 38 Hen. III (1253) down to 1736, even direct contempts were punished through ordinary criminal procedure, and not summarily by the Chancellor.] It seems that *Dodd's Case*, Sand. Chan. Ord. 538 (1736) is the earliest where a court of chancery ever committed a stranger for contempt, and that was a case of a direct affront to the court. In 1742 Lord Hardwicke, in punishing a direct contempt to the chancery court (*Re Read and Huggonson and the St. James' Evening Post*, 2 Atk. 469) treated as new summary punishment without the usual processes followed in criminal cases.

Not only Chief Justice Wilmot, in his undelivered opinion in *Rex* v. *Almon*, Wilmot's Notes, 243 (1765); but also Blackstone, 4 Comm. 285, and Hawkins, 2 Pl. Crown, c. 22, § 36, fail to cite authority for their conclusions that the courts were empowered to deal summarily with direct contempts. See *Gompers* v. *United States*, 233 U. S. 604; Beale, Harv. Law Rev., Jan. 1908.

The court for the trial of criminal contempts may be constituted by act of Congress as a tribunal consisting of a judge and jury. 8 Am. & Eng. Encyc. Law, 2d ed., p. 22; *In re Choate*, 18 Civ. Pro. Rep. (N. Y.) 186; *People* v. *Barrett*, 18 *id.* 230; affd. 121 N. Y. 678; 15 Corp. Juris, 717; *People* v. *Molineux*, 168 N. Y. 264; *Mascall* v. *Commissioners*, 122 Ill. 620.

III. It is the duty of Congress to provide for trial by jury in criminal contempt proceedings. Const. Art. III, § 2; Sixth Amendment; *Schick* v. *United States*, 195 U. S. 68. Distinguishing *In re Debs*, 158 U. S. 564, and *Eilenbecker* v. *Plymouth County*, 134 U. S. 31.

IV. The petitioners were "employees" within the meaning of the Clayton Act.

A strike or lockout does not terminate the relationship of employer and employee. 31 Yale Law. Jour. 321; *Farmers' Loan & Trust Co.* v. *Northern Pac. R. R. Co.*, 60 Fed. 803; *Delaware, L. & W. R. R. Co.* v. *Bowns*, 58 N. Y. 573; *Longshore Co.* v. *Howell*, 26 Ore. 527; *Arthur* v. *Oakes*, 63 Fed. 310; *Uden* v. *Schaefer*, 110 Wash. 391; *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Kemp* v. *Division No. 241*, 255 Ill. 213; *Rex* v. *Neilson*, 44 N. S. 488.

A very good example of the continuance of the relationship of employer and employee in connection with railroads, despite the cessation of work and payment of wages, is found in the rules governing the work of the shop-craft employees affecting all important railroads and particularly the one concerned in the present case. See Rules 27 and 28, promulgated by the Railroad Labor Board, Decisions U. S. R. R. Labor Board, vol. II. pp. 576, 577. Rule 28 is particularly impressive as showing that men laid off on account of reduction in forces are still regarded as employees because otherwise the carrier would be violating the law in furnishing them with passes. Int. Com. Act, § 1 (7), § 22.

The purpose of the Clayton Act is to deal with industrial relations in a broad way, and it would be destructive of the legislative intention to construe the words used in such a technical sense as to make it possible for private persons to defeat the effective operation of the act. (See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, dissenting opinion.)

The force of this contention is doubled when one considers the provisions of the Transportation Act in connection with the provisions of the Clayton Act. The Transportation Act provides for the adjustment of disputes between carriers and employees in order to prevent

interruptions of interstate commerce, and provides for representation of employees through their organizations. If, when a dispute arises between a carrier and its employees resulting in the cessation of work, it should be held that the workers concerned can no longer be regarded as employees, then the provision for their representation through their organizations would be nullified. The purpose of the act would be defeated. The Transportation Act recognizes that those men who are trained to perform the services necessary for the operation of the railroads are to be regarded as railway employees who may be organized in associations to promote their common interests, the membership of which cannot be arbitrarily diminished by the action of management in temporarily refusing to furnish work. In like manner, the membership of these organizations is not diminished by the refusal of groups of members to perform work under nonacceptable conditions. The organized employees must be regarded as employees whether all the members are actively engaged in rendering service or not. See construction of word "employees" in *Duplex Case, supra.*

V. Trial by jury is an absolute right under the provisions of the Clayton Act.

Mr. James W. Henson and *Mr. Jackson H. Ralston,* with whom *Mr. N. P. Taylor* was on the brief, for Sandefur.

This is clearly a proceeding to punish for criminal contempt. The facts certified by the Court of Appeals show that after the injunction was granted the Canoe Creek Coal Company filed affidavits tending to show that certain named parties, including Sandefur, had violated the injunction by the use of violence and threats of violence against some of the miners that worked for that company; that the acts charged against him and the others were criminal offenses under the laws of Kentucky; that he was tried before the court, found guilty, the court holding the proceedings to be punitive, and the sentence was

that he pay one hundred dollars into court for the use and benefit of the United States.

This and other courts have often distinguished between criminal and civil contempts. *Merchants' Stock & Grain Co.* v. *Board of Trade*, 201 Fed. 20; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418.

The judgment of the District Court was in no sense remedial, for the Coal Company had suffered no loss and hence received none of the fine imposed. The sentence was punitive to vindicate the authority of the court and was ordered paid into court for the use and benefit of the United States as any other fine in criminal cases.

It is conceded that the courts of this country have held in a general way that courts had the inherent power to hear and punish summarily direct and indirect contempts, but these decisions were generally rendered in the absence of any statute regulating the power or procedure. An investigation, however, will disclose, as we believe, that for hundreds of years even direct contempts were uniformly dealt with by information, presentment, or indictment, and trial by jury. This appears to have been the procedure from the time of the Magna Carta down to the death of Henry V. After this it appears that a practice grew up for the courts without a jury to deal with and punish summarily offenders who had committed some direct contempt or who had refused to obey a decree of the court. It is submitted that it is very doubtful whether, when the Constitution of the United States was written, there was any recognized "inherent" authority in a court of equity to punish summarily for indirect contempts. Many of our courts have held that the authority to try and punish persons guilty of contempt was inherent in the court, but in practically every instance to which our attention has been called they have followed legislative direction upon the subject.

All federal courts, except the Supreme Court, are creatures of Congress and subject to its will. In their creation

they were clothed with certain powers and duties; but these may be and are changed from time to time.

Congress is given, by Art. I, § 8, cl. 18, of the Constitution, the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

When the Constitution provided that the judicial power should be vested in one Supreme Court "and in such inferior courts as the Congress may from time to time ordain and establish" (Art. III, §1), there was no limitation fixing the exact portion of the judicial power which should be vested in the judge as a constituent part of the court. Certainly, since the inferior federal courts were to be such courts as Congress might establish, there was ample power conferred upon Congress to direct in what manner and with what constituent parts such inferior courts should be established and function. Therefore, how can it be contended that the Constitution prohibits Congress from establishing as the "court" for the trial of a certain class of cases a tribunal consisting of a judge and jury? See *In re Choate*, 18 Civ. Pro. Rep. (N. Y.) 186; *People* v. *Barrett*, 18 *id.* 230; affd. 121 N. Y. 678; *People* v. *Molineux*, 168 N. Y. 264; *Mascall* v. *Commissioners*, 122 Ill. 620.

Furthermore, Congress was under express mandate to carry out the purpose expressed in the same article that "the trial of all crimes . . . shall be by jury"—a purpose reiterated in the Sixth Amendment.

Again, may it not be suggested that it is properly the function of the legislative department rather than the judicial department to determine what are "criminal prosecutions?"

If Congress had established a District Court to consist of three judges of whom a majority must agree, in order to render judgment, would it not be an unlawful act for

one judge to exercise alone any of the powers of the court? Is it not equally unlawful, when an inferior court is constituted by act of Congress as consisting of a judge and jury, for the judge alone to attempt to exercise the power conferred upon that court?

It may be conceded that, in the absence of ample legislative authority, all courts, from the necessity of the case, have an inherent power to protect themselves and enforce their judgments. Still, the question remains, can the law-making power regulate or define the procedure to be taken by courts in such cases?

No court, so far as we are informed, has ever denied the right of trial by jury where a statute provided for such a trial, except the District Court in *In re Atchison*, 284 Fed. 604; and in *Michaelson* v. *United States*, 291 Fed. 940. Legislative power to grant the jury trial has been conceded in many cases. *Arnold* v. *Commonwealth*, 80 Ky. 300; *In re Gitkin*, 164 Fed. 71; *Kirk* v. *Milwaukee Co.*, 26 Fed. 501; *Ex parte Morris*, 28 Oh. C. C. 611; *State* v. *Hazeltine*, 82 Wash. 81; *In re Oldham*, 89 N. C. 23; *Atwell* v. *United States*, 162 Fed. 97; *State* v. *Galloway*, 5 Cold. (Tenn.) 326; *State* v. *Frew*, 24 W. Va. 416; *State* v. *Morrill*, 16 Ark. 384; *In re Gorham*, 129 N. C. 481; *Nichols* v. *Superior Court*, 130 Mich. 187.

This whole question of the power of Congress is set at rest by *Ex parte Robinson*, 19 Wall. 505. Cf. *Kline* v. *Burke Constr. Co.*, 260 U. S. 226; *Martin* v. *Hunter's Lessee*, 1 Wheat. 326, 338.

The provisions of the Clayton Act in question grant an absolute right to trial by jury and the act is constitutional.

The jury may pass upon the facts going to make up guilt or innocence.

If it is held that Congress was without power to enact this legislation granting a trial by jury, then that lack of power must be arrived at by implication, as the organic

law is silent on the question. Can it be contended that an unrestrained power will be inferred or implied in such cases?

The manifest purpose of the Clayton Act was to assist in solving many of the perplexing questions that frequently grow out of the engagements of these particular classes (employer and employee) which compose the business life of our country. This Court has recognized and affirmed the validity of some of the most material parts of the act under consideration. *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *In re Atchison*, 284 Fed. 604. *In re Debs*, 158 U. S. 594, distinguished.

The court in *Patton* v. *United States*, 288 Fed. 812, fully recognized the validity of the act in granting a jury trial in a case like this. So, *United States* v. *Taliaferro*, 290 Fed. 214; *Taliaferro* v. *United States*, 290 Fed. 906.

Mr. Edward Porter Humphrey, with whom *Mr. William Wait Crawford* and *Mr. Churchhill Humphrey* were on the brief, for Canoe Creek Coal Company.

Congress cannot invade the province of the judiciary. *Kilbourn* v. *Thompson*, 103 U. S. 168; *Massachusetts* v. *Mellon*, 262 U. S. 447.

A District Court of the United States has inherent and constitutional power to act in matters of contempt, without a jury, and the provision of the Clayton Act, permitting trial by jury in such cases, is invalid because, if upheld, it would materially impair the court's power in this respect. Clayton Act, 38 Stat. 738; Const., Art. III, § 1; Art. III, § 2, cl. 1, 2; Jud. Code, § 268; Rev. Stats. § 725; *Ex parte Terry*, 128 U. S. 289; *In re Nevitt*, 117 Fed. 448; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Comm.* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564; *Michaelson* v. *United States*, 291 Fed. 940; *In re Atchison*, 284 Fed. 604; *Hale* v. *State*, 55 Oh. St. 210; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418;

Kline v. *Burke Constr. Co.*, 260 U. S. 226; *Farrell* v. *Waterman S. S. Co.*, 291 Fed. 604.

There is no right of trial by jury in a contempt proceeding under the Constitution, because it is not the trial of a crime or a criminal prosecution, and the court can act without a jury in such matter, regardless of whether the proceeding be classified as a civil or criminal contempt. Const., Art. III, § 2, cl. 3; Sixth Amendment; Seventh Amendment; Clayton Act, 38 Stat. 738; *Myers* v. *United States*, 264 U. S. 95; *In re Debs*, 158 U. S. 564; *United States* v. *Debs*, 64 Fed. 724; *McDougall* v. *Sheridan*, 23 Idaho, 191; *Bowman* v. *Continental Oil Co.*, 256 U. S. 642; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418; *Merchants' Stock & Grain Co.* v. *Board of Trade*, 201 Fed. 20; *United States* v. *Eaton*, 144 U. S. 687.

Mr. Richard L. Kennedy, with whom *Mr. William T. Faricy*, *Mr. Lyman T. Powell* and *Mr. John S. Sprowls* were on the brief, for respondent in No. 246.

I. The decision of the trial court denying the petitioners a jury trial upon the ground that the acts charged did not constitute criminal offenses under any statute of the United States or under the laws of Wisconsin and were, therefore, not within the Clayton Act, was correct.

We agree that these prosecutions were for criminal contempt as distinguished from civil contempt. We do not agree that they are ordinary "criminal prosecutions." On the contrary, they are "sui generis" and have been so recognized by this Court for many years. *Bessette* v. *Conkey Co.*, 194 U. S. 324; *Myers* v. *United States*, 264 U. S. 95.

The distinction between civil and criminal contempt results from a consideration of whether the punishment sought to be imposed is for the purpose of vindicating the dignity and authority of the court and for the benefit of the public generally, or is for the benefit of the op-

posing party in the action. *Bessette* v. *Conkey Co., supra; Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418.

It is not a determinative factor that the acts charged constituted a violation of a state or federal statute. An act might be a criminal contempt without constituting a violation of any state or federal statute. Conversely, the act might be a clear violation of a state or federal criminal statute, or both, and yet be a civil rather than a criminal contempt.

A concession that the acts charged constituted criminal contempts does not militate against the contention that the acts charged did not constitute a criminal offense under state or federal statutes and that the Clayton Act was, therefore, inapplicable.

Counsel have not cited any federal statute of which the acts charged constitute a violation, and we believe there is none.

Section 4466a, Wis. Rev. Stats., would be applicable only if petitioners had been charged with maliciously doing the things prohibited by the statute. *Aikens* v. *Wisconsin*, 195 U. S. 194; *Allis-Chalmers Co.* v. *Iron Molders' Union*, 150 Fed. 155; *Randall* v. *Lonstorf*, 126 Wis. 147; *White* v. *White*, 132 Wis. 121; *Schultz* v. *State*, 135 Wis. 644; *Schultz* v. *Frankfort Ins. Co.*, 151 Wis. 537; *Trade Press Pub. Co.* v. *Milwaukee Typographical Union*, 180 Wis. 449.

To constitute a violation of § 4466c, Wis. Rev. Stats., the accused must either have hindered or prevented another from engaging in or continuing in any lawful work or employment, or attempted so to hinder or prevent, etc. The petitioners were not charged with having done either of these two things. They were charged with having been "assembled for the purpose of intimidating and preventing men, desirous of securing employment with said company, from entering upon such employment." In other words, they were charged with having

gotten together for the purpose of violating § 4466c but not with having violated it.

II. Under § 22 of the Clayton Act a jury trial is not mandatory, even in contempt cases falling within the provisions of § 21.

Not only do the terms of § 22 appear to justify this contention, but the history of the proceedings leading to its enactment and the state of the law at the time appear to establish that fact. Inherent power in the courts to punish for contempt, without a jury, had been recognized by a long line of decisions of this Court. Innumerable decisions of the state courts and of the federal courts, other than this Court, were to the same effect.

A construction of § 22 which would nullify this rule should not be adopted, unless the language of the section will bear no other construction.

An examination of the Congressional Record covering the period when the Clayton Act and antecedent measures were being urged upon Congress, indicates that Congress did not intend to make trial by jury compulsory, but to leave it in the discretion of the court, and so used in § 22 the word "may" advisedly.

Where an amendment to a pending measure is offered, which tends to broaden its scope, refusal of the legislative body to adopt an amendment indicates an intention to restrict the application of the statute. *Connole* v. *Norfolk & W. Ry. Co.*, 216 Fed. 823.

When the majority prepared and reported its bill, it deliberately rejected the word "shall" contained in the bills which had been before it, to make a trial by jury compulsory, and inserted in lieu of it the permissive word "may".

The Court, in construing these sections, will assume that Congress intelligently made this change, and particularly that it heeded the suggestions, in this respect, so often made in the decisions, for the purpose of avoid-

ing constitutional doubts and a conflict with the courts. *Lincoln* v. *United States*, 202 U. S. 484; *In re Debs*, 158 U. S. 564.

To say that this section is merely declaratory of the common law is not at all fatal to the act, because, as we understand the decisions in *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, and *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, the Court so construed § 20 of this same act, and decided that Congress had introduced no new principle, but that the section was merely declaratory of what had been the best practice, always, and that Congress was merely seeking to stabilize a rule of action and render it uniform.

III. The petitioners were not entitled to a jury trial under §§ 20, 21 and 22 of the Clayton Act, because the relationship of employer and employee did not exist between the respondent and the petitioners after July 1, 1922, when they went out on the strike of the Shop Crafts Unions, because of (a) the legal status of the respondent, and (b) that of the petitioners, as former employees of a common carrier engaged in interstate commerce. *Wilson* v. *New*, 243 U. S. 332, 352, 353. See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 470; *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, 202.

The petitioners were not employees but "former employees." *Canoe Creek Coal Co.* v. *Christinson*, 281 Fed. 559, 561.

Attention is invited to a resolution of the United States Railroad Labor Board, in which it is stated, in substance, that the six organizations comprising the Federated Shop Crafts, had notified the Board that the members of the organization, "are no longer employees of the railroads, under the jurisdiction of the Railroad Labor Board or subject to the application of the Transportation Act."

The suggestion that the provisions of the Transportation Act regarding the adjustment of disputes between

railroads and their employees would be nullified if strikers were not regarded as employees, would appear to be completely answered so far as the petitioners are concerned by the finding of the Circuit Court of Appeals that the strike in question was an "unlawful strike."

In *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, it is held that the Clayton Act, while permitting members of labor organizations to carry out the legitimate objects thereof, does not authorize "unlawful" strikes. *Hitchman Coal Co.* v. *Mitchell*, 245 U. S. 229; *Eagle Glass Co.* v. *Rowe*, 245 U. S. 275; *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184; *Truax* v. *Corrigan*, 257 U. S. 312; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344.

The petitioners were members of the nation-wide organization involved in *United States* v. *Railway Employees' Dept.*, 283 Fed. 479; 286 Fed. 228; 290 Fed. 978.

Where an organization of strikers, as such, deliberately carries on a strike in an unlawful manner and resorts to the criminal methods adopted by the organization of which petitioners were members, the relationship of employer and employee has been terminated.

IV. The so-called strike of the shop-craft unions was a controversy with or a strike against the Labor Board as an instrumentality of our National Government, and is to be classed with the insurrection of the Boston policemen.

To establish the exemption or privilege under § 20, the issue must be a dispute concerning the terms or conditions of employment. *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *United States* v. *Railway Employees' Dept.*, 290 Fed. 978.

The legal status of the Railroad Labor Board, and the effect of its decisions, were established in *Pennsylvania R. R. Co.* v. *Labor Board*, 261 U. S. 72.

V. The petitioners' demand for a jury trial was rightly denied because §§ 21 and 22 of the Clayton Act, in providing for a trial by jury, are unconstitutional.

The functions of government under our system are apportioned among three coördinate branches. No one branch should be permitted to encroach upon the authority of another. Petitioners' argument would result in making Congress supreme. See dissenting opinion in *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 510, 511; *Massachusetts* v. *Mellon*, 262 U. S. 447, 488; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 327–330. Cf. *Cary* v. *Curtis*, 3 How. 235, 245.

While Art. III, § 1, of the Constitution specifically refers by name only to the Supreme Court and to this extent makes a distinction between such court and the inferior federal courts, petitioners' argument would apply to all the federal courts, including the Supreme Court, as the Constitution provides that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It would, therefore, appear that so far as the vesting of judicial power is concerned, there is no distinction between the Supreme Court and the inferior federal courts.

The constitutional convention, in vesting the judicial power, had in mind the acquisition of additional territory and the increase of population, and realized that the number and the territorial jurisdiction of the inferior courts which might become necessary could not be determined at the time the Constitution was adopted. Therefore, Congress was empowered to establish from time to time such courts as were necessary to meet the exigencies of litigation and to fix the territorial jurisdiction of each; but the respondent submits that it was never intended that Congress should limit the judicial power of such courts when established. As stated by Story, J., in *Martin* v. *Hunter's Lessee*, *supra*, it was the duty of Congress to vest the whole judicial power in such courts as were established, as otherwise Congress might successively re-

fuse to vest the jurisdiction in any one class of cases enumerated in the Constitution and thereby defeat the jurisdiction as to all. Section 1 of Art. III of the Constitution, in providing that "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office," appears to make the creation of such inferior courts mandatory upon Congress.

Assuming, but not conceding, that Congress had the power in the act establishing inferior federal courts to limit their judicial power, it is submitted that when once so ordained and established, and vested with all "judicial power," it was then beyond the power of Congress to abridge or take away any of these inherent powers. Distinguishing, *Kline* v. *Burke Constr. Co.*, 260 U. S. 226. Cf. *Farrell* v. *Waterman S. S. Co.*, 291 Fed. 604.

In England, the judicial was not known as a separate power, but was, both in theory and practice, a part of the executive. The king, at the common law, by his prerogative, had the power, as chief magistrate of the nation, to erect tribunals of justice, to define their powers and duties, to create offices and appoint and remove officers and to appoint judges and limit the tenure of their office. There could be no contest between the executive and judicial power, for the whole was executive. *United States* v. *Kendall*, 26 Fed. Cas. pp. 702, 753.

The petitioners say that by § 17, Act of 1789, "Congress limited the power of the inferior federal courts to punish for contempt." *Sed vide, United States* v. *Toledo Newspaper Co.*, 220 Fed. 458, 481; affd. 237 Fed. 986; 247 U. S. 402.

Congress in passing the Act of March 2, 1831, c. 99, 4 Stat. 487, was not seeking to limit the powers of the courts but simply to define them.

The existence of inherent power in the federal courts to punish for contempt, without a jury, has been es-

tablished by a long line of decisions of this Court, viz: *United States* v. *Hudson*, 7 Cr. 32; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304; *Anderson* v. *Dunn*, 6 Wheat 204; *Ex parte Robinson*, 19 Wall. 505; *Ex parte Terry*, 128 U. S. 289; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Interstate Commerce Comm.* v. *Brimson*, 154 U. S. 447; *In re Debs*, 158 U. S. 564; *Tinsley* v. *Anderson*, 171 U. S. 101; *Bessette* v. *Conkey Co.*, 194 U. S. 324; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418; *Gompers* v. *United States*, 233 U. S. 604; *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402; *Howat* v. *Kansas*, 258 U. S. 181.

Decisions of federal courts, other than this Court, and of the state courts, to the same effect, are too numerous to permit of citation. See 31 Cent. Dig., "Jury," §§ 63, 139; and Decennial and succeeding annual digests, "Jury," § 13 (21), § 21 (4).

In view of this array of authority, the respondent submits that the power of a court to punish for contempt, without a jury, is inherent, and being so inherent, it is essential, inseparable and inalienable. If the power to punish for contempt is one of the inherent judicial powers of the court, essential to its existence, is it not a part of the "judicial power," which, by the Constitution, was vested not only in the Supreme Court but also in the inferior courts, when once established? See *Kilbourn* v. *Thompson*, 103 U. S. 168, 190.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These cases were argued together and will be disposed of in one opinion. The principal question presented in the *Michaelson* case, and the sole question in the *Sandefur* case, is whether the provision of the Clayton Act of October 15, 1914, c. 323, 38 Stat. 738, 739, §§ 21, 22, requiring a jury trial in certain specified kinds of contempt

is constitutional. Subordinate questions presented in the *Michaelson* case are: (a) Whether petitioners were, or whether it is necessary that they should be, "employees" within the meaning of the act, § 20; (b) whether the acts alleged to constitute the contempt were also criminal offenses under the statutes of the United States or of the State where committed; (c) whether the provision for a jury is mandatory or permissive.

The petitioners in the *Michaelson* case, were striking employees of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and, with others, were proceeded against by bill in equity for combining and conspiring to interfere with interstate commerce by picketing and the use of force and violence, etc. After a hearing, a preliminary injunction was granted. Subsequently, proceedings in contempt were instituted in the District Court, charging petitioners with sundry violations of the injunction; and a rule to show cause was issued. Upon the answer and return to the rule, petitioners applied for a jury trial under § 22 of the Clayton Act; but the District Court denied the application and proceeded without a jury. At the conclusion of the hearing, the petitioners were adjudged guilty and sentenced to pay fines in various sums, and in default of payment to stand committed to jail until such fines were paid. Thereupon the case was taken to the Circuit Court of Appeals by writ of error; and by that court the judgments were affirmed. 291 Fed. 940.

First. Is the provision of the Clayton Act, granting a right of trial by jury, constitutional? The court below held in the negative, on the ground that the power of a court to vindicate or enforce its decree in equity is inherent; is derived from the Constitution as a part of its judicial power; and that Congress is without constitutional authority to deprive the parties in an equity court of the right of trial by the chancellor.

If the statute now under review encroaches upon the equity jurisdiction intended by the Constitution, a grave constitutional question in respect of its validity would be presented; and it, therefore, becomes our duty, as this Court has frequently said, to construe it "if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375.

Shortly stated, the statute provides that wilful disobedience of any lawful writ, process, order, rule, decree or command of any district court of the United States or any court of the District of Columbia by doing any act or thing forbidden, if such act or thing be of such character as to constitute also a criminal offense under any statute of the United States or law of any State in which the act is committed, shall be proceeded against as in the statute provided. In all such cases the "trial may be by the court, or, upon demand of the accused, by a jury" and "such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information." Upon conviction the accused is to be *punished* "by fine or imprisonment, or both," the fine to be "paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct."

The provision for trial by jury upon demand, as we shall presently show, is mandatory; and the question to be answered is whether it infringes any power of the courts vested by the Constitution and unalterable by congressional legislation. We first inquire whether the proceeding contemplated by the statute is for a civil or a criminal contempt. If it be the latter—since the proceeding for criminal contempt, unlike that for civil contempt, is between the public and the defendant, is an independent proceeding at law, and no part of the original cause,

Gompers v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444-446, 451—we are at once relieved of the doubt which might otherwise arise in respect of the authority of Congress to set aside the settled rule that a suit in equity is to be tried by the chancellor without a jury unless he choose to call one as purely advisory. We think the statute, reasonably construed, relates exclusively to criminal contempts. The act or thing charged must be of such character as also to constitute a crime. Prosecution must be in conformity with the practice in criminal cases. Upon conviction the accused is to be punished by fine or imprisonment, or both. True, the fine may be paid to the United States or to the complainant or divided among the parties injured by the act, as the court may direct; but that does not alter the essential nature of the proceeding contemplated by the statute. The discretion given the court in this respect is incidental and subordinate to the dominating purpose of the proceeding which is punitive to vindicate the authority of the court and punish the act of disobedience as a public wrong. See *Re Merchants' Stock Co., Petitioner*, 223 U. S. 639, 641; *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461; *Merchants' Stock & Grain Co.* v. *Board of Trade*, 187 Fed. 398, 401; *Kreplik* v. *Couch Patents Co.*, 190 Fed. 565, 572. "If the contempt savours of criminality, and the sentence is penal, that according to the books appears to be enough." *Long Wellesley's Case*, 2 Russ. & M. 639, 667.

But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction

over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson*, 19 Wall. 505, 510–511; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 326); but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and is in express terms carefully limited to the cases of contempt specifically defined. Neither do we think it purports to reach cases of failure or refusal to comply affirmatively with a decree—that is to do something which a decree commands—which may be enforced by coercive means or remedied by purely compensatory relief. If the reach of the statute had extended to the cases which are excluded a different and more serious question would arise. But the simple question presented is, whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself, *Gompers* v. *Bucks Stove & Range Co.*, *supra*, p. 444. The fundamental characteristics of both are the same. Contempts of the kind within the terms of the statute partake of the nature of crimes in all essential particulars. "So truly are they crimes that it seems to be proved that in the early law they were

punished only by the usual criminal procedure, 3 Transactions of the Royal Historical Society, N. S. p. 147 (1885), and that at least in England it seems that they still may be and preferably are tried in that way." *Gompers* v. *United States*, 233 U. S. 604, 610–611. This is also pointed out by counsel in the case of *O'Shea* v. *O'Shea and Parnell*, L. R. 15 Prob. Div. 59, 61; and, in the course of one of the opinions in that case, it is said (p. 64): "The offence of the appellant [criminal contempt] is certainly a criminal offence. I do not say that it is an indictable offence, but, whether indictable or not, it is a criminal offence, and it is an offence, and the only offence that I know of, which is punishable at common law by summary process." The proceeding is not between the parties to the original suit but between the public and the defendant. The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information is that in the latter the act complained of is the violation of a law and in the former the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not. The statutory extension of this constitutional right to a class of contempts which are properly described as "criminal offences" does not, in our opinion, invade the powers of the courts as intended by the Constitution or violate that instrument in any other way.

Second. We come, then, to consider the reasons which, assuming the validity of the statute, are nevertheless urged to preclude the right to a jury trial. The first contention is that petitioners were not "employees" within the meaning of the act, because, having gone out on strike, the relationship of employer and employee had come to an end. The dispute out of which arose the unlawful acts alleged in the bill was one between the employer on the one hand and its employees on the other, respecting terms

or conditions of employment, namely, the scale of wages to be paid employees of the class to which defendants belonged. This dispute had been submitted to the Railroad Labor Board, which, after a hearing, had fixed the scale to be paid; but the defendants declined to abide by the action of the Board and went out on strike, and in furtherance thereof conspired together and committed various unlawful acts in restraint of respondent's interstate commerce. The purpose of the strike was to bring about an increase of wages. The case was obviously within the provisions of § 20, in respect of injunctions. The court below held that, while ordinarily this would be so, it was not so in this instance because, (1) the employer was a railroad company, bound to continue its operations in the public interest and therefore not on an equal footing with its employees, and (2) that, since the scale of wages had been fixed by the Railroad Labor Board, the strike, in effect, was against the Board, a governmental instrumentality, "to be classed with the insurrection of the Boston policemen." To say that railroad employees are outside the provisions of the statute, is not to construe the statute, but to engraft upon it an exception not warranted by its terms. If Congress had intended such an exception, it is fair to suppose that it would have said so affirmatively. The words of the act are plain and in terms inclusive of all classes of employment; and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction, but rather an argument justifying the supposititious exception on the ground of necessity or of policy—a matter addressed to the legislative and not the judicial authority. Neither was the strike one against the Labor Board. It is a strike notwithstanding the action of the Board, but against the respondent. The policemen's strike was against a governmental employer. The Labor Board was not an employer but an arbitrator, whose determination, moreover, had only the force of

moral suasion. *Pennsylvania R. R. Co.* v. *Labor Board*, 261 U. S. 72, 84. Moreover, it is to be observed that §§ 21 and 22, which deal with the subject of contempts, do not contain the limitation in respect of employment contained in § 20. Section 21 provides: "That *any person* who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court," etc., "shall be proceeded against for his said contempt as hereinafter provided." Section 22 provides for a trial by jury upon demand of the accused in all cases within the purview of the act. Whether the general language of § 21 should be limited by construction because it forms a part of an act dealing with unlawful restraints and monopolies, or for any other reason, we need not now stop to inquire. It is enough to say that in a controversy, such as we have here, at least, it does not require the existence of the status of employment at the time the acts constituting the contempt are committed, in order to bring into operation the provision for a trial by jury.

We take no time to discuss the contention that the acts alleged as constituting contempt do not also constitute criminal offenses. According to the petition for the rule and affidavits in support of it these consisted of abusive language, assembling in numbers, picketing and other acts, for the purpose of intimidating and preventing men desirous of securing employment with the railway company from entering such employment. *Prima facie*, at least, this violated the statute of Wisconsin where the acts were committed, R. S. 1921, § 4466c,[1] and this is enough.

[1] "Section 4466c. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage worker, or who shall attempt to so hinder or prevent shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment in the discretion of the court."

Neither is it necessary to consider at length the final contention that the jury provision of the statute is not mandatory but permissive. It is mandatory. The argument to the contrary is based on the use of the permissive word "may"—"such trial may be by the court, or, upon demand of the accused, by a jury." Strictly and grammatically considered, the word "may" limits both phrases, "by the court" and "by a jury"; but to construe it as contended, in practical effect, would be to subvert the plain intent and good sense of the statute. And this is made clear by the history leading up to and accompanying the enactment, as well as the reports of the committees having the bill in charge. The Judiciary Committee of the House, in reporting the bill, said:

"The trial is by the court (1) *in case no jury be demanded by the accused,* (2) if the contempt be in the presence of the court or so near thereto as to obstruct the administration of justice, or (3) if the contempt be charged to be in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name or on behalf of the United States. *In other cases the trial is to be by jury.*" House Report, No. 613, 62d Cong., 2d sess.

The intent of Congress in adopting the provision was to give to the accused a right of trial by jury, not merely to vest authority in the judge to call a jury at his discretion. See *Supervisors* v. *United States*, 4 Wall. 435, 446-7.

The *Sandefur* case is here on certificate requesting the instruction of this Court upon the following question of law:

"Do those provisions of Section 22 of the Clayton Act which require a conviction upon a jury trial as a condition precedent to punishment for contempt, upon demand for jury in the case specified, impose a valid restriction upon the inherent judicial power of the United States District Courts?"

42 Syllabus.

The facts stated in the certificate bring the case within the principle of what has already been said, and the question must be answered in the affirmative.

No. 246 reversed and remanded to the District Court for further proceedings in conformity with this opinion.

No. 232, answer: Yes.